

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2238

---

## AN ACT

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Bunning-Bereuter-Blumenaur Flood Insurance Reform  
6 Act of 2004”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.  
 Sec. 2. Congressional findings.

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

- Sec. 101. Extension of program and consolidation of authorizations.  
 Sec. 102. Establishment of pilot program for mitigation of severe repetitive loss properties.  
 Sec. 103. Amendments to existing flood mitigation assistance program.  
 Sec. 104. FEMA authority to fund mitigation activities for individual repetitive claims properties.  
 Sec. 105. Amendments to additional coverage for compliance with land use and control measures.  
 Sec. 106. Actuarial rate properties.  
 Sec. 107. Geospatial digital flood hazard data.  
 Sec. 108. Replacement of mobile homes on original sites.  
 Sec. 109. Reiteration of FEMA responsibility to map mudslides.

TITLE II—MISCELLANEOUS PROVISIONS

- Sec. 201. Definitions.  
 Sec. 202. Supplemental forms.  
 Sec. 203. Acknowledgement form.  
 Sec. 204. Flood insurance claims handbook.  
 Sec. 205. Appeal of decisions relating to flood insurance coverage.  
 Sec. 206. Study and report on use of cost compliance coverage.  
 Sec. 207. Minimum training and education requirements.  
 Sec. 208. GAO study and report.  
 Sec. 209. Prospective payment of flood insurance premiums.  
 Sec. 210. Report on changes to fee schedule or fee payment arrangements.

3 **SEC. 2. CONGRESSIONAL FINDINGS.**

4 The Congress finds that—

- 5 (1) the national flood insurance program—  
 6 (A) identifies the flood risk;  
 7 (B) provides flood risk information to the  
 8 public;  
 9 (C) encourages State and local govern-  
 10 ments to make appropriate land use adjust-  
 11 ments to constrict the development of land

1 which is exposed to flood damage and minimize  
2 damage caused by flood losses; and

3 (D) makes flood insurance available on a  
4 nationwide basis that would otherwise not be  
5 available, to accelerate recovery from floods,  
6 mitigate future losses, save lives, and reduce  
7 the personal and national costs of flood disas-  
8 ters;

9 (2) the national flood insurance program in-  
10 sures approximately 4,400,000 policyholders;

11 (3) approximately 48,000 properties currently  
12 insured under the program have experienced, within  
13 a 10-year period, 2 or more flood losses where each  
14 such loss exceeds the amount \$1,000;

15 (4) approximately 10,000 of these repetitive-  
16 loss properties have experienced either 2 or 3 losses  
17 that cumulatively exceed building value or 4 or more  
18 losses, each exceeding \$1,000;

19 (5) repetitive-loss properties constitute a signifi-  
20 cant drain on the resources of the national flood in-  
21 surance program, costing about \$200,000,000 annu-  
22 ally;

23 (6) repetitive-loss properties comprise approxi-  
24 mately 1 percent of currently insured properties but

1 are expected to account for 25 to 30 percent of  
2 claims losses;

3 (7) the vast majority of repetitive-loss prop-  
4 erties were built before local community implementa-  
5 tion of floodplain management standards under the  
6 program and thus are eligible for subsidized flood in-  
7 surance;

8 (8) while some property owners take advantage  
9 of the program allowing subsidized flood insurance  
10 without requiring mitigation action, others are  
11 trapped in a vicious cycle of suffering flooding, then  
12 repairing flood damage, then suffering flooding,  
13 without the means to mitigate losses or move out of  
14 harm's way;

15 (9) mitigation of repetitive-loss properties  
16 through buyouts, elevations, relocations, or flood-  
17 proofing will produce savings for policyholders under  
18 the program and for Federal taxpayers through re-  
19 duced flood insurance losses and reduced Federal  
20 disaster assistance;

21 (10) a strategy of making mitigation offers  
22 aimed at high-priority repetitive-loss properties and  
23 shifting more of the burden of recovery costs to  
24 property owners who choose to remain vulnerable to  
25 repetitive flood damage can encourage property own-

1       ers to take appropriate actions that reduce loss of  
 2       life and property damage and benefit the financial  
 3       soundness of the program;

4               (11) the method for addressing repetitive-loss  
 5       properties should be flexible enough to take into con-  
 6       sideration legitimate circumstances that may prevent  
 7       an owner from taking a mitigation action; and

8               (12) focusing the mitigation and buy-out of re-  
 9       petitive loss properties upon communities and prop-  
 10      erty owners that choose to voluntarily participate in  
 11      a mitigation and buy-out program will maximize the  
 12      benefits of such a program, while minimizing any  
 13      adverse impact on communities and property owners.

14               **TITLE I—AMENDMENTS TO**  
 15      **FLOOD INSURANCE ACT OF 1968**

16      **SEC. 101. EXTENSION OF PROGRAM AND CONSOLIDATION**  
 17               **OF AUTHORIZATIONS.**

18           (a) **BORROWING AUTHORITY.**—The first sentence of  
 19      section 1309(a) of the National Flood Insurance Act of  
 20      1968 (42 U.S.C. 4016(a)), is amended by striking  
 21      “through December” and all that follows through “, and”  
 22      and inserting “through the date specified in section 1319,  
 23      and”.

24           (b) **AUTHORITY FOR CONTRACTS.**—Section 1319 of  
 25      the National Flood Insurance Act of 1968 (42 U.S.C.

1 4026), is amended by striking “after” and all that follows  
 2 and inserting “after September 30, 2008.”.

3 (c) EMERGENCY IMPLEMENTATION.—Section  
 4 1336(a) of the National Flood Insurance Act of 1968 (42  
 5 U.S.C. 4056(a)), is amended by striking “during the pe-  
 6 riod” and all that follows through “in accordance” and  
 7 inserting “during the period ending on the date specified  
 8 in section 1319, in accordance”.

9 (d) AUTHORIZATION OF APPROPRIATIONS FOR STUD-  
 10 IES.—Section 1376(c) of the National Flood Insurance  
 11 Act of 1968 (42 U.S.C. 4127(c)), is amended by striking  
 12 “through” and all that follows and inserting “through the  
 13 date specified in section 1319, for studies under this  
 14 title.”.

15 **SEC. 102. ESTABLISHMENT OF PILOT PROGRAM FOR MITI-**  
 16 **GATION OF SEVERE REPETITIVE LOSS PROP-**  
 17 **ERTIES.**

18 (a) IN GENERAL.—The National Flood Insurance  
 19 Act of 1968 is amended by inserting after section 1361  
 20 (42 U.S.C. 4102) the following:

21 **“SEC. 1361A. PILOT PROGRAM FOR MITIGATION OF SEVERE**  
 22 **REPETITIVE LOSS PROPERTIES.**

23 “(a) AUTHORITY.—To the extent amounts are made  
 24 available for use under this section, the Director may, sub-  
 25 ject to the limitations of this section, provide financial as-

1 sistance to States and communities that decide to partici-  
2 pate in the pilot program established under this section  
3 for taking actions with respect to severe repetitive loss  
4 properties (as such term is defined in subsection (b)) to  
5 mitigate flood damage to such properties and losses to the  
6 National Flood Insurance Fund from such properties.

7 “(b) SEVERE REPETITIVE LOSS PROPERTY.—For  
8 purposes of this section, the term ‘severe repetitive loss  
9 property’ has the following meaning:

10 “(1) SINGLE-FAMILY PROPERTIES.—In the case  
11 of a property consisting of 1 to 4 residences, such  
12 term means a property that—

13 “(A) is covered under a contract for flood  
14 insurance made available under this title; and

15 “(B) has incurred flood-related damage—

16 “(i) for which 4 or more separate  
17 claims payments have been made under  
18 flood insurance coverage under this title,  
19 with the amount of each such claim ex-  
20 ceeding \$5,000, and with the cumulative  
21 amount of such claims payments exceeding  
22 \$20,000; or

23 “(ii) for which at least 2 separate  
24 claims payments have been made under  
25 such coverage, with the cumulative amount

1           of such claims exceeding the value of the  
2           property.

3           “(2) MULTIFAMILY PROPERTIES.—In the case  
4           of a property consisting of 5 or more residences,  
5           such term shall have such meaning as the Director  
6           shall by regulation provide.

7           “(c) ELIGIBLE ACTIVITIES.—Amounts provided  
8           under this section to a State or community may be used  
9           only for the following activities:

10           “(1) MITIGATION ACTIVITIES.—To carry out  
11           mitigation activities that reduce flood damages to se-  
12           vere repetitive loss properties, including elevation,  
13           relocation, demolition, and floodproofing of struc-  
14           tures, and minor physical localized flood control  
15           projects, and the demolition and rebuilding of prop-  
16           erties to at least Base Flood Elevation or greater, if  
17           required by any local ordinance.

18           “(2) PURCHASE.—To purchase severe repetitive  
19           loss properties, subject to subsection (g).

20           “(d) MATCHING REQUIREMENT.—

21           “(1) IN GENERAL.—Except as provided in para-  
22           graph (2), in any fiscal year the Director may not  
23           provide assistance under this section to a State or  
24           community in an amount exceeding 3 times the  
25           amount that the State or community certifies, as the



1 Director shall require, that the State or community  
2 will contribute from non-Federal funds for carrying  
3 out the eligible activities to be funded with such as-  
4 sistance amounts.

5 “(2) REDUCED COMMUNITY MATCH.—With re-  
6 spect to any 1-year period in which assistance is  
7 made available under this section, the Director may  
8 adjust the contribution required under paragraph  
9 (1) by any State, and for the communities located  
10 in that State, to not less than 10 percent of the cost  
11 of the activities for each severe repetitive loss prop-  
12 erty for which grant amounts are provided if, for  
13 such year—

14 “(A) the State has an approved State miti-  
15 gation plan meeting the requirements for haz-  
16 ard mitigation planning under section 322 of  
17 the Robert T. Stafford Disaster Relief and  
18 Emergency Assistance Act (42 U.S.C. 5165)  
19 that specifies how the State intends to reduce  
20 the number of severe repetitive loss properties;  
21 and

22 “(B) the Director determines, after con-  
23 sultation with the State, that the State has  
24 taken actions to reduce the number of such  
25 properties.

1           “(3) NON-FEDERAL FUNDS.—For purposes of  
2 this subsection, the term ‘non-Federal funds’ in-  
3 cludes State or local agency funds, in-kind contribu-  
4 tions, any salary paid to staff to carry out the eligi-  
5 ble activities of the recipient, the value of the time  
6 and services contributed by volunteers to carry out  
7 such activities (at a rate determined by the Direc-  
8 tor), and the value of any donated material or build-  
9 ing and the value of any lease on a building.

10           “(e) NOTICE OF MITIGATION PROGRAM.—

11           “(1) IN GENERAL.—Upon selecting a State or  
12 community to receive assistance under subsection (a)  
13 to carry out eligible activities, the Director shall no-  
14 tify the owners of a severe repetitive loss property,  
15 in plain language, within that State or community—

16           “(A) that their property meets the defini-  
17 tion of a severe repetitive loss property under  
18 this section;

19           “(B) that they may receive an offer of as-  
20 sistance under this section;

21           “(C) of the types of assistance potentially  
22 available under this section;

23           “(D) of the implications of declining such  
24 offer of assistance under this section; and

1           “(E) that there is a right to appeal under  
2           this section.

3           “(2) IDENTIFICATION OF SEVERE REPETITIVE  
4           LOSS PROPERTIES.—The Director shall take such  
5           steps as are necessary to identify severe repetitive  
6           loss properties, and submit that information to the  
7           relevant States and communities.

8           “(f) STANDARDS FOR MITIGATION OFFERS.—The  
9           program under this section for providing assistance for eli-  
10          gible activities for severe repetitive loss properties shall be  
11          subject to the following limitations:

12           “(1) PRIORITY.—In determining the properties  
13           for which to provide assistance for eligible activities  
14           under subsection (c), the Director shall provide as-  
15           sistance for properties in the order that will result  
16           in the greatest amount of savings to the National  
17           Flood Insurance Fund in the shortest period of time,  
18           in a manner consistent with the allocation formula  
19           under paragraph (5).

20           “(2) OFFERS.—The Director shall provide as-  
21           sistance in a manner that permits States and com-  
22           munities to make offers to owners of severe repet-  
23           itive loss properties to take eligible activities under  
24           subsection (c) as soon as practicable.

1           “(3) CONSULTATION.—In determining for  
2           which eligible activities under subsection (c) to pro-  
3           vide assistance with respect to a severe repetitive  
4           loss property, the relevant States and communities  
5           shall consult, to the extent practicable, with the  
6           owner of the property.

7           “(4) DEFERENCE TO LOCAL MITIGATION DECI-  
8           SIONS.—The Director shall not, by rule, regulation,  
9           or order, establish a priority for funding eligible ac-  
10          tivities under this section that gives preference to  
11          one type or category of eligible activity over any  
12          other type or category of eligible activity.

13          “(5) ALLOCATION.—

14               “(A) IN GENERAL.—Subject to subpara-  
15               graphs (B) and (C), of the total amount made  
16               available for assistance under this section in  
17               any fiscal year, the Director shall allocate as-  
18               sistance to a State, and the communities lo-  
19               cated within that State, based upon the per-  
20               centage of the total number of severe repetitive  
21               loss properties located within that State.

22               “(B) REDISTRIBUTION.—Any funds allo-  
23               cated to a State, and the communities within  
24               the State, under subparagraph (A) that have  
25               not been obligated by the end of each fiscal

1 year shall be redistributed by the Director to  
 2 other States and communities to carry out eligi-  
 3 ble activities in accordance with this section.

4 “(C) EXCEPTION.—Of the total amount  
 5 made available for assistance under this section  
 6 in any fiscal year, 10 percent shall be made  
 7 available to communities that—

8 “(i) contain one or more severe repet-  
 9 itive loss properties; and

10 “(ii) are located in States that receive  
 11 little or no assistance, as determined by  
 12 the Director, under the allocation formula  
 13 under subparagraph (A).

14 “(6) NOTICE.—Upon making an offer to pro-  
 15 vide assistance with respect to a property for any eli-  
 16 gible activity under subsection (c), the State or com-  
 17 munity shall notify each holder of a recorded inter-  
 18 est on the property of such offer and activity.

19 “(g) PURCHASE OFFERS.—A State or community  
 20 may take action under subsection (c)(2) to purchase a se-  
 21 vere repetitive loss property only if the following require-  
 22 ments are met:

23 “(1) USE OF PROPERTY.—The State or com-  
 24 munity enters into an agreement with the Director  
 25 that provides assurances that the property pur-

1 chased will be used in a manner that is consistent  
2 with the requirements of section 404(b)(2)(B) of the  
3 Robert T. Stafford Disaster Relief and Emergency  
4 Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for prop-  
5 erties acquired, accepted, or from which a structure  
6 will be removed pursuant to a project provided prop-  
7 erty acquisition and relocation assistance under such  
8 section 404(b).

9 “(2) OFFERS.—The Director shall provide as-  
10 sistance in a manner that permits States and com-  
11 munities to make offers to owners of severe repet-  
12 itive loss properties and of associated land to engage  
13 in eligible activities as soon as possible.

14 “(3) PURCHASE PRICE.—The amount of pur-  
15 chase offer is not less than the greatest of—

16 “(A) the amount of the original purchase  
17 price of the property, when purchased by the  
18 holder of the current policy of flood insurance  
19 under this title;

20 “(B) the total amount owed, at the time  
21 the offer to purchase is made, under any loan  
22 secured by a recorded interest on the property;  
23 and

24 “(C) an amount equal to the fair market  
25 value of the property immediately before the

1 most recent flood event affecting the property,  
2 or an amount equal to the current fair market  
3 value of the property.

4 “(4) COMPARABLE HOUSING PAYMENT.—If a  
5 purchase offer made under paragraph (2) is less  
6 than the cost of the homeowner-occupant to pur-  
7 chase a comparable replacement dwelling outside the  
8 flood hazard area in the same community, the Direc-  
9 tor shall make available an additional relocation pay-  
10 ment to the homeowner-occupant to apply to the dif-  
11 ference.

12 “(h) INCREASED PREMIUMS IN CASES OF REFUSAL  
13 TO MITIGATE.—

14 “(1) IN GENERAL.—In any case in which the  
15 owner of a severe repetitive loss property refuses an  
16 offer to take action under paragraph (1) or (2) of  
17 subsection (c) with respect to such property, the Di-  
18 rector shall—

19 “(A) notify each holder of a recorded inter-  
20 est on the property of such refusal; and

21 “(B) notwithstanding subsections (a)  
22 through (c) of section 1308, thereafter the  
23 chargeable premium rate with respect to the  
24 property shall be the amount equal to 150 per-  
25 cent of the chargeable rate for the property at

1           the time that the offer was made, as adjusted  
2           by any other premium adjustments otherwise  
3           applicable to the property and any subsequent  
4           increases pursuant to paragraph (2) and sub-  
5           ject to the limitation under paragraph (3).

6           “(2) INCREASED PREMIUMS UPON SUBSEQUENT  
7           FLOOD DAMAGE.—Notwithstanding subsections (a)  
8           through (c) of section 1308, if the owner of a severe  
9           repetitive loss property does not accept an offer to  
10          take action under paragraph (1) or (2) of subsection  
11          (c) with respect to such property and a claim pay-  
12          ment exceeding \$1,500 is made under flood insur-  
13          ance coverage under this title for damage to the  
14          property caused by a flood event occurring after  
15          such offer is made, thereafter the chargeable pre-  
16          mium rate with respect to the property shall be the  
17          amount equal to 150 percent of the chargeable rate  
18          for the property at the time of such flood event, as  
19          adjusted by any other premium adjustments other-  
20          wise applicable to the property and any subsequent  
21          increases pursuant to this paragraph and subject to  
22          the limitation under paragraph (3).

23          “(3) LIMITATION ON INCREASED PREMIUMS.—  
24          In no case may the chargeable premium rate for a  
25          severe repetitive loss property be increased pursuant



1 to this subsection to an amount exceeding the appli-  
2 cable estimated risk premium rate for the area (or  
3 subdivision thereof) under section 1307(a)(1).

4 “(4) TREATMENT OF DEDUCTIBLES.—Any in-  
5 crease in chargeable premium rates required under  
6 this subsection for a severe repetitive loss property  
7 may be carried out, to the extent appropriate, as de-  
8 termined by the Director, by adjusting any deduct-  
9 ible charged in connection with flood insurance cov-  
10 erage under this title for the property.

11 “(5) NOTICE OF CONTINUED OFFER.—Upon  
12 each renewal or modification of any flood insurance  
13 coverage under this title for a severe repetitive loss  
14 property, the Director shall notify the owner that  
15 the offer made pursuant to subsection (c) is still  
16 open.

17 “(6) APPEALS.—

18 “(A) IN GENERAL.—Any owner of a severe  
19 repetitive loss property may appeal a deter-  
20 mination of the Director to take action under  
21 paragraph (1)(B) or (2) with respect to such  
22 property, based only upon the following  
23 grounds:

24 “(i) As a result of such action, the  
25 owner of the property will not be able to

1 purchase a replacement primary residence  
2 of comparable value and that is function-  
3 ally equivalent.

4 “(ii) Based on independent informa-  
5 tion, such as contractor estimates or ap-  
6 praisals, the property owner believes that  
7 the price offered for purchasing the prop-  
8 erty is not an accurate estimation of the  
9 value of the property, or the amount of  
10 Federal funds offered for mitigation activi-  
11 ties, when combined with funds from non-  
12 Federal sources, will not cover the actual  
13 cost of mitigation.

14 “(iii) As a result of such action, the  
15 preservation or maintenance of any pre-  
16 historic or historic district, site, building,  
17 structure, or object included in, or eligible  
18 for inclusion in, the National Register of  
19 Historic Places will be interfered with, im-  
20 paired, or disrupted.

21 “(iv) The flooding that resulted in the  
22 flood insurance claims described in sub-  
23 section (b)(2) for the property resulted  
24 from significant actions by a third party in

1 violation of Federal, State, or local law, or  
2 ordinance, or regulation.

3 “(v) In purchasing the property, the  
4 owner relied upon flood insurance rate  
5 maps of the Federal Emergency Manage-  
6 ment Agency that were current at the time  
7 and did not indicate that the property was  
8 located in an area having special flood haz-  
9 ards.

10 “(vi) The owner of the property,  
11 based on independent information, such as  
12 contractor estimates or other appraisals,  
13 demonstrates that an alternative eligible  
14 activity under subsection (c) is at least as  
15 cost effective as the initial offer of assist-  
16 ance.

17 “(B) PROCEDURE.—An appeal under this  
18 paragraph of a determination of the Director  
19 shall be made by filing, with the Director, a re-  
20 quest for an appeal within 90 days after receiv-  
21 ing notice of such determination. Upon receiv-  
22 ing the request, the Director shall select, from  
23 a list of independent third parties compiled by  
24 the Director for such purpose, a party to hear  
25 such appeal. Within 90 days after filing of the

1 request for the appeal, such third party shall  
 2 review the determination of the Director and  
 3 shall set aside such determination if the third  
 4 party determines that the grounds under sub-  
 5 paragraph (A) exist. During the pendency of an  
 6 appeal under this paragraph, the Director shall  
 7 stay the applicability of the rates established  
 8 pursuant to paragraph (1)(B) or (2), as appli-  
 9 cable.

10 “(C) EFFECT OF FINAL DETERMINA-  
 11 TION.—In an appeal under this paragraph—

12 “(i) if a final determination is made  
 13 in favor of the property owner under sub-  
 14 paragraph (A) exist, the third party hear-  
 15 ing such appeal shall require the Director  
 16 to reduce the chargeable risk premium rate  
 17 for flood insurance coverage for the prop-  
 18 erty involved in the appeal from the  
 19 amount required under paragraph (1)(B)  
 20 or (2) to the amount paid prior to the offer  
 21 to take action under paragraph (1) or (2)  
 22 of subsection (c); and

23 “(ii) if a final determination is made  
 24 that the grounds under subparagraph (A)  
 25 do not exist, the Director shall promptly

1           increase the chargeable risk premium rate  
2           for such property to the amount estab-  
3           lished pursuant to paragraph (1)(B) or  
4           (2), as applicable, and shall collect from  
5           the property owner the amount necessary  
6           to cover the stay of the applicability of  
7           such increased rates during the pendency  
8           of the appeal.

9           “(D) COSTS.—If the third party hearing  
10          an appeal under this paragraph is compensated  
11          for such service, the costs of such compensation  
12          shall be borne—

13                 “(i) by the owner of the property re-  
14                 questing the appeal, if the final determina-  
15                 tion in the appeal is that the grounds  
16                 under subparagraph (A) do not exist; and

17                 “(ii) by the National Flood Insurance  
18                 Fund, if such final determination is that  
19                 the grounds under subparagraph (A) do  
20                 exist.

21          “(E) REPORT.—Not later than 6 months  
22          after the date of the enactment of the Bunning-  
23          Bereuter-Blumenaur Flood Insurance Reform  
24          Act of 2004, the Director shall submit a report

1           describing the rules, procedures, and adminis-  
2           tration for appeals under this paragraph to—

3                       “(i) the Committee on Banking,  
4                       Housing, and Urban Affairs of the Senate;  
5                       and

6                       “(ii) the Committee on Financial  
7                       Services of the House of Representatives.

8           “(i) DISCRETIONARY ACTIONS IN CASES OF FRAUDU-  
9 LENT CLAIMS.—If the Director determines that a fraudu-  
10 lent claim was made under flood insurance coverage under  
11 this title for a severe repetitive loss property, the Director  
12 may—

13                       “(1) cancel the policy and deny the provision to  
14                       such policyholder of any new flood insurance cov-  
15                       erage under this title for the property; or

16                       “(2) refuse to renew the policy with such policy-  
17                       holder upon expiration and deny the provision of any  
18                       new flood insurance coverage under this title to such  
19                       policyholder for the property.

20           “(j) RULES.—

21                       “(1) IN GENERAL.—The Director shall, by  
22                       rule—

23                       “(A) subject to subsection (f)(4), develop  
24                       procedures for the distribution of funds to

1 States and communities to carry out eligible ac-  
2 tivities under this section; and

3 “(B) ensure that the procedures developed  
4 under paragraph (1)—

5 “(i) require the Director to notify  
6 States and communities of the availability  
7 of funding under this section, and that  
8 participation in the pilot program under  
9 this section is optional;

10 “(ii) provide that the Director may as-  
11 sist States and communities in identifying  
12 severe repetitive loss properties within  
13 States or communities;

14 “(iii) allow each State and community  
15 to select properties to be the subject of eli-  
16 gible activities, and the appropriate eligible  
17 activity to be performed with respect to  
18 each severe repetitive loss property; and

19 “(iv) require each State or community  
20 to submit a list of severe repetitive loss  
21 properties to the Director that the State or  
22 community would like to be the subject of  
23 eligible activities under this section.

24 “(2) CONSULTATION.—Not later than 90 days  
25 after the date of enactment of this Act, the Director

1 shall consult with State and local officials in car-  
2 rying out paragraph (1)(A), and provide an oppor-  
3 tunity for an oral presentation, on the record, of  
4 data and arguments from such officials.

5 “(k) FUNDING.—

6 “(1) IN GENERAL.—Pursuant to section  
7 1310(a)(8), the Director may use amounts from the  
8 National Flood Insurance Fund to provide assist-  
9 ance under this section in each of fiscal years 2005,  
10 2006, 2007, 2008, and 2009, except that the  
11 amount so used in each such fiscal year may not ex-  
12 ceed \$40,000,000 and shall remain available until  
13 expended. Notwithstanding any other provision of  
14 this title, amounts made available pursuant to this  
15 subsection shall not be subject to offsetting collec-  
16 tions through premium rates for flood insurance cov-  
17 erage under this title.

18 “(2) ADMINISTRATIVE EXPENSES.—Of the  
19 amounts made available under this subsection, the  
20 Director may use up to 5 percent for expenses asso-  
21 ciated with the administration of this section.

22 “(l) TERMINATION.—The Director may not provide  
23 assistance under this section to any State or community  
24 after September 30, 2009.”.



1 (b) AVAILABILITY OF NATIONAL FLOOD INSURANCE  
 2 FUND AMOUNTS.—Section 1310(a) of the National Flood  
 3 Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

4 (1) in paragraph (7), by striking “and” at the  
 5 end; and

6 (2) by striking paragraph (8) and inserting the  
 7 following:

8 “(8) for financial assistance under section  
 9 1361A to States and communities for taking actions  
 10 under such section with respect to severe repetitive  
 11 loss properties, but only to the extent provided in  
 12 section 1361A(i); and”.

13 **SEC. 103. AMENDMENTS TO EXISTING FLOOD MITIGATION**  
 14 **ASSISTANCE PROGRAM.**

15 (a) STANDARD FOR APPROVAL OF MITIGATION  
 16 PLANS.—Section 1366(e)(3) of the National Flood Insur-  
 17 ance Act of 1968 (42 U.S.C. 4104c) is amended by adding  
 18 at the end the following new sentence: “The Director may  
 19 approve only mitigation plans that give priority for fund-  
 20 ing to such properties, or to such subsets of properties,  
 21 as are in the best interest of the National Flood Insurance  
 22 Fund.”.

23 (b) PRIORITY FOR MITIGATION ASSISTANCE.—Sec-  
 24 tion 1366(e) of the National Flood Insurance Act of 1968

1 (42 U.S.C. 4104e) is amended by striking paragraph (4)  
2 and inserting the following:

3           “(4) PRIORITY FOR MITIGATION ASSISTANCE.—  
4           In providing grants under this subsection for mitiga-  
5           tion activities, the Director shall give first priority  
6           for funding to such properties, or to such subsets of  
7           such properties as the Director may establish, that  
8           the Director determines are in the best interests of  
9           the National Flood Insurance Fund and for which  
10          matching amounts under subsection (f) are avail-  
11          able.”.

12          (c) COORDINATION WITH STATES AND COMMU-  
13          NITIES.—Section 1366 of the National Flood Insurance  
14          Act of 1968 (42 U.S.C. 4104e) is amended by adding at  
15          the end the following:

16               “(m) COORDINATION WITH STATES AND COMMU-  
17          NITIES.—The Director shall, in consultation and coordina-  
18          tion with States and communities take such actions as are  
19          appropriate to encourage and improve participation in the  
20          national flood insurance program of owners of properties,  
21          including owners of properties that are not located in  
22          areas having special flood hazards (the 100-year flood-  
23          plain), but are located within flood prone areas.”.

24          (d) FUNDING.—Section 1367 of the National Flood  
25          Insurance Act of 1968 (42 U.S.C. 4104d) is amended—

1           (1) in subsection (b), by striking paragraph (1)  
2           and inserting the following:

3           “(1) in each fiscal year, amounts from the Na-  
4           tional Flood Insurance Fund not exceeding  
5           \$40,000,000, to remain available until expended;”;

6           (2) by redesignating subsections (c) and (d) as  
7           subsection (d) and (e), respectively; and

8           (3) by inserting after subsection (b) the fol-  
9           lowing:

10          “(c) ADMINISTRATIVE EXPENSES.—The Director  
11          may use not more than 5 percent of amounts made avail-  
12          able under subsection (b) to cover salaries, expenses, and  
13          other administrative costs incurred by the Director to  
14          make grants and provide assistance under sections 1366  
15          and 1323.”.

16          (e) REDUCED COMMUNITY MATCH.—Section 1366(g)  
17          of the National Flood Insurance Act of 1968 (42 U.S.C.  
18          4104c(g)), is amended—

19                 (2) by redesignating paragraph (2) as para-  
20                 graph (3); and

21                 (3) by inserting after paragraph (1) the fol-  
22                 lowing:

23                 “(2) REDUCED COMMUNITY MATCH.—With re-  
24                 spect to any 1-year period in which assistance is  
25                 made available under this section, the Director may

1       adjust the contribution required under paragraph  
2       (1) by any State, and for the communities located  
3       in that State, to not less than 10 percent of the cost  
4       of the activities for each severe repetitive loss prop-  
5       erty for which grant amounts are provided if, for  
6       such year—

7               “(A) the State has an approved State miti-  
8               gation plan meeting the requirements for haz-  
9               ard mitigation planning under section 322 of  
10              the Robert T. Stafford Disaster Relief and  
11              Emergency Assistance Act (42 U.S.C. 5165)  
12              that specifies how the State intends to reduce  
13              the number of severe repetitive loss properties;  
14              and

15              “(B) the Director determines, after con-  
16              sultation with the State, that the State has  
17              taken actions to reduce the number of such  
18              properties.”.

19       (f) NATIONAL FLOOD MITIGATION FUND.—Section  
20       1366(b)(2) of the National Flood Insurance Act of 1968  
21       (42 U.S.C. 4104c(b)(2)), is amended by striking  
22       “\$1,500,000” and inserting “7.5 percent of the available  
23       funds under this section”.

1 **SEC. 104. FEMA AUTHORITY TO FUND MITIGATION ACTIVI-**  
 2 **TIES FOR INDIVIDUAL REPETITIVE CLAIMS**  
 3 **PROPERTIES.**

4 (a) IN GENERAL.—Chapter I of the National Flood  
 5 Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amend-  
 6 ed by adding at the end the following:

7 **“SEC. 1323. GRANTS FOR REPETITIVE INSURANCE CLAIMS**  
 8 **PROPERTIES.**

9 “(a) IN GENERAL.—The Director may provide fund-  
 10 ing for mitigation actions that reduce flood damages to  
 11 individual properties for which 1 or more claim payments  
 12 for losses have been made under flood insurance coverage  
 13 under this title, but only if the Director determines that—

14 “(1) such activities are in the best interest of  
 15 the National Flood Insurance Fund; and

16 “(2) such activities cannot be funded under the  
 17 program under section 1366 because—

18 “(A) the requirements of section 1366(g)  
 19 are not being met by the State or community  
 20 in which the property is located; or

21 “(B) the State or community does not  
 22 have the capacity to manage such activities.

23 “(b) PRIORITY FOR WORST-CASE PROPERTIES.—In  
 24 determining the properties for which funding is to be pro-  
 25 vided under this section, the Director shall consult with  
 26 the States in which such properties are located and pro-

1 vide assistance for properties in the order that will result  
 2 in the greatest amount of savings to the National Flood  
 3 Insurance Fund in the shortest period of time.”.

4 (b) AVAILABILITY OF NATIONAL FLOOD INSURANCE  
 5 FUND AMOUNTS.—Section 1310(a) of the National Flood  
 6 Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended  
 7 by adding at the end the following:

8 “(9) for funding, not to exceed \$10,000,000 in  
 9 any fiscal year, for mitigation actions under section  
 10 1323, except that, notwithstanding any other provi-  
 11 sion of this title, amounts made available pursuant  
 12 to this paragraph shall not be subject to offsetting  
 13 collections through premium rates for flood insur-  
 14 ance coverage under this title.”.

15 **SEC. 105. AMENDMENTS TO ADDITIONAL COVERAGE FOR**  
 16 **COMPLIANCE WITH LAND USE AND CONTROL**  
 17 **MEASURES.**

18 (a) COMPLIANCE WITH LAND USE AND CONTROL  
 19 MEASURES.—Section 1304(b) of the National Flood In-  
 20 surance Act of 1968 (42 U.S.C. 4011(b)) is amended—

21 (1) in the matter preceding paragraph (1)—  
 22 (A) by striking “compliance” and inserting  
 23 “implementing measures that are consistent”;  
 24 and

1 (B) by inserting “by the community” after  
2 “established”;

3 (2) in paragraph (2), by striking “have flood  
4 damage in which the cost of repairs equals or ex-  
5 ceeds 50 percent of the value of the structure at the  
6 time of the flood event; and” and inserting “are sub-  
7 stantially damaged structures;”

8 (3) in paragraph (3), by striking “compliance  
9 with land use and control measures.” and inserting  
10 “the implementation of such measures; and”; and

11 (4) by inserting after paragraph (3) and before  
12 the last undesignated paragraph the following:

13 “(4) properties for which an offer of mitigation  
14 assistance is made under—

15 “(A) section 1366 (Flood Mitigation As-  
16 sistance Program);

17 “(B) section 1368 (Repetitive Loss Pri-  
18 ority Program and Individual Priority Property  
19 Program);

20 “(C) the Hazard Mitigation Grant Pro-  
21 gram authorized under section 404 of the Rob-  
22 ert T. Stafford Disaster Assistance and Emer-  
23 gency Relief Act (42 U.S.C. 5170c);

24 “(D) the Predisaster Hazard Mitigation  
25 Program under section 203 of the Robert T.

1           Stafford Disaster Assistance and Emergency  
2           Relief Act (42 U.S.C. 5133); and

3           “(E) any programs authorized or for which  
4           funds are appropriated to address any unmet  
5           needs or for which supplemental funds are  
6           made available.”.

7           (b) DEFINITIONS.—Section 1370(a) of the National  
8 Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is  
9 amended—

10           (1) by striking paragraph (7) and inserting the  
11 following:

12           “(7) the term ‘repetitive loss structure’ means  
13 a structure covered by a contract for flood insurance  
14 that—

15           “(A) has incurred flood-related damage on  
16 2 occasions, in which the cost of repair, on the  
17 average, equaled or exceeded 25 percent of the  
18 value of the structure at the time of each such  
19 flood event; and

20           “(B) at the time of the second incidence of  
21 flood-related damage, the contract for flood in-  
22 surance contains increased cost of compliance  
23 coverage.”;

24           (2) in paragraph (13), by striking “and” at the  
25 end;



1           (3) in paragraph (14), by striking the period  
2           and inserting “; and”; and

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

4           “(15) the term ‘substantially damaged struc-  
5           ture’ means a structure covered by a contract for  
6           flood insurance that has incurred damage for which  
7           the cost of repair exceeds an amount specified in any  
8           regulation promulgated by the Director, or by a  
9           community ordinance, whichever is lower.”.

10 **SEC. 106. ACTUARIAL RATE PROPERTIES.**

11           (a) IN GENERAL.—Section 1308 of the National  
12 Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended  
13 by striking subsection (c) and inserting the following:

14           “(c) ACTUARIAL RATE PROPERTIES.—Subject only  
15 to the limitations provided under paragraphs (1) and (2),  
16 the chargeable rate shall not be less than the applicable  
17 estimated risk premium rate for such area (or subdivision  
18 thereof) under section 1307(a)(1) with respect to the fol-  
19 lowing properties:

20           “(1) POST-FIRM PROPERTIES.—Any property  
21           the construction or substantial improvement of  
22           which the Director determines has been started after  
23           December 31, 1974, or started after the effective  
24           date of the initial rate map published by the Direc-  
25           tor under paragraph (2) of section 1360 for the area

1 in which such property is located, whichever is later,  
2 except that the chargeable rate for properties under  
3 this paragraph shall be subject to the limitation  
4 under subsection (e).

5 “(2) CERTAIN LEASED COASTAL AND RIVER  
6 PROPERTIES.—Any property leased from the Federal  
7 Government (including residential and nonresidential  
8 properties) that the Director determines is located  
9 on the river-facing side of any dike, levee, or other  
10 riverine flood control structure, or seaward of any  
11 seawall or other coastal flood control structure.”.

12 (b) INAPPLICABILITY OF ANNUAL LIMITATIONS ON  
13 PREMIUM INCREASES.—Section 1308(e) of the National  
14 Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is  
15 amended by striking “Notwithstanding” and inserting  
16 “Except with respect to properties described under para-  
17 graph (2) or (3) of subsection (c), and notwithstanding”.

18 **SEC. 107. GEOSPATIAL DIGITAL FLOOD HAZARD DATA.**

19 For the purposes of flood insurance and floodplain  
20 management activities conducted pursuant to the National  
21 Flood Insurance Program under the National Flood In-  
22 surance Act of 1968 (42 U.S.C. 4001 et seq.), geospatial  
23 digital flood hazard data distributed by the Federal Emer-  
24 gency Management Agency, or its designee, or the printed  
25 products derived from that data, are interchangeable and

1 legally equivalent for the determination of the location of  
 2 1 in 100 year and 1 in 500 year flood planes, provided  
 3 that all other geospatial data shown on the printed prod-  
 4 uct meets or exceeds any accuracy standard promulgated  
 5 by the Federal Emergency Management Agency.

6 **SEC. 108. REPLACEMENT OF MOBILE HOMES ON ORIGINAL**  
 7 **SITES.**

8 Section 1315 of the National Flood Insurance Act of  
 9 1968 (42 U.S.C. 4022) is amended by adding at the end  
 10 the following:

11 “(c) REPLACEMENT OF MOBILE HOMES ON ORIGI-  
 12 NAL SITES.—

13 “(1) COMMUNITY PARTICIPATION.—The place-  
 14 ment of any mobile home on any site shall not affect  
 15 the eligibility of any community to participate in the  
 16 flood insurance program under this title and the  
 17 Flood Disaster Protection Act of 1973 (notwith-  
 18 standing that such placement may fail to comply  
 19 with any elevation or flood damage mitigation re-  
 20 quirements), if—

21 “(A) such mobile home was previously lo-  
 22 cated on such site;

23 “(B) such mobile home was relocated from  
 24 such site because of flooding that threatened or  
 25 affected such site; and

1           “(C) such replacement is conducted not  
 2 later than the expiration of the 180-day period  
 3 that begins upon the subsidence (in the area of  
 4 such site) of the body of water that flooded to  
 5 a level considered lower than flood levels.

6           “(2) DEFINITION.—For purposes of this sub-  
 7 section, the term ‘mobile home’ has the meaning  
 8 given such term in the law of the State in which the  
 9 mobile home is located.”.

10 **SEC. 109. REITERATION OF FEMA RESPONSIBILITY TO MAP**  
 11 **MUDSLIDES.**

12       As directed in section 1360(b) of the National Flood  
 13 Insurance Act of 1968 (42 U.S.C. 4101(b)), the Director  
 14 of the Federal Emergency Management Agency is again  
 15 directed to accelerate the identification of risk zones with-  
 16 in flood-prone and mudslide-prone areas, as provided by  
 17 subsection (a)(2) of such section 1360, in order to make  
 18 known the degree of hazard within each such zone at the  
 19 earliest possible date.

20 **TITLE II—MISCELLANEOUS**  
 21 **PROVISIONS**

22 **SEC. 201. DEFINITIONS.**

23       In this title, the following definitions shall apply:

1           (1) DIRECTOR.—The term “Director” means  
2           the Director of the Federal Emergency Management  
3           Agency.

4           (2) FLOOD INSURANCE POLICY.—The term  
5           “flood insurance policy” means a flood insurance  
6           policy issued under the National Flood Insurance  
7           Act of 1968 (42 U.S.C. et seq.).

8           (3) PROGRAM.—The term “Program” means  
9           the National Flood Insurance Program established  
10          under the National Flood Insurance Act of 1968 (42  
11          U.S.C. 4001 et seq.).

12 **SEC. 202. SUPPLEMENTAL FORMS.**

13          (a) IN GENERAL.—Not later than 6 months after the  
14          date of enactment of this Act, the Director shall develop  
15          supplemental forms to be issued in conjunction with the  
16          issuance of a flood insurance policy that set forth, in sim-  
17          ple terms—

18               (1) the exact coverages being purchased by a  
19               policyholder;

20               (2) any exclusions from coverage that apply to  
21               the coverages purchased;

22               (3) an explanation, including illustrations, of  
23               how lost items and damages will be valued under the  
24               policy at the time of loss;

1           (4) the number and dollar value of claims filed  
2           under a flood insurance policy over the life of the  
3           property, and the effect, under the National Flood  
4           Insurance Act of 1968 (42 U.S.C. 4001 et seq.), of  
5           the filing of any further claims under a flood insur-  
6           ance policy with respect to that property; and

7           (5) any other information that the Director de-  
8           termines will be helpful to policyholders in under-  
9           standing flood insurance coverage.

10          (b) DISTRIBUTION.—The forms developed under sub-  
11         section (a) shall be given to—

12           (1) all holders of a flood insurance policy at the  
13           time of purchase and renewal; and

14           (2) insurance companies and agents that are  
15           authorized to sell flood insurance policies.

16         **SEC. 203. ACKNOWLEDGEMENT FORM.**

17          (a) IN GENERAL.—Not later than 6 months after the  
18         date of enactment of this Act, the Director shall develop  
19         an acknowledgement form to be signed by the purchaser  
20         of a flood insurance policy that contains—

21           (1) an acknowledgement that the purchaser has  
22           received a copy of the standard flood insurance poli-  
23           cy, and any forms developed under section 202; and

24           (2) an acknowledgement that the purchaser has  
25           been told that the contents of a property or dwelling

1 are not covered under the terms of the standard  
2 flood insurance policy, and that the policyholder has  
3 the option to purchase additional coverage for such  
4 contents.

5 (b) DISTRIBUTION.—Copies of an acknowledgement  
6 form executed under subsection (a) shall be made available  
7 to the purchaser and the Director.

8 **SEC. 204. FLOOD INSURANCE CLAIMS HANDBOOK.**

9 (a) IN GENERAL.—Not later than 6 months after the  
10 date of enactment of this Act, the Director shall develop  
11 a flood insurance claims handbook that contains—

12 (1) a description of the procedures to be fol-  
13 lowed to file a claim under the Program, including  
14 how to pursue a claim to completion;

15 (2) how to file supplementary claims, proof of  
16 loss, and any other information relating to the filing  
17 of claims under the Program; and

18 (3) detailed information regarding the appeals  
19 process established under section 205.

20 (b) DISTRIBUTION.—The handbook developed under  
21 subsection (a) shall be made available to—

22 (1) each insurance company and agent author-  
23 ized to sell flood insurance policies; and

1           (2) each purchaser, at the time of purchase and  
2           renewal, of a flood insurance policy, and at the time  
3           of any flood loss sustained by such purchaser.

4 **SEC. 205. APPEAL OF DECISIONS RELATING TO FLOOD IN-**  
5 **SURANCE COVERAGE.**

6           Not later than 6 months after the date of enactment  
7 of this Act, the Director shall, by regulation, establish an  
8 appeals process through which holders of a flood insurance  
9 policy may appeal the decisions, with respect to claims,  
10 proofs of loss, and loss estimates relating to such flood  
11 insurance policy, of—

12           (1) any insurance agent or adjuster, or insur-  
13           ance company; or

14           (2) any employee or contractor of the Federal  
15           Emergency Management Agency.

16 **SEC. 206. STUDY AND REPORT ON USE OF COST COMPLI-**  
17 **ANCE COVERAGE.**

18           Not later than 1 year after the date of enactment  
19 of this Act, the Director of the Federal Emergency Man-  
20 agement Agency shall submit to Congress a report that  
21 sets forth—

22           (1) the use of cost of compliance coverage  
23           under section 1304(b) of the National Flood Insur-  
24           ance Act of 1968 (42 U.S.C. 4011(b)) in connection  
25           with flood insurance policies;



1           (2) any barriers to policyholders using the  
2 funds provided by cost of compliance coverage under  
3 that section 1304(b) under a flood insurance policy,  
4 and recommendations to address those barriers; and

5           (3) the steps that the Federal Emergency Man-  
6 agement Agency has taken to ensure that funds paid  
7 for cost of compliance coverage under that section  
8 1304(b) are being used to lessen the burdens on all  
9 homeowners and the Program.

10 **SEC. 207. MINIMUM TRAINING AND EDUCATION REQUIRE-**  
11 **MENTS.**

12       The Director of the Federal Emergency Management  
13 Agency shall, in cooperation with the insurance industry,  
14 State insurance regulators, and other interested parties—

15           (1) establish minimum training and education  
16 requirements for all insurance agents who sell flood  
17 insurance policies; and

18           (2) not later than 6 months after the date of  
19 enactment of this Act, publish these requirements in  
20 the Federal Register, and inform insurance compa-  
21 nies and agents of the requirements.

22 **SEC. 208. GAO STUDY AND REPORT.**

23       (a) STUDY.—The Comptroller General of the United  
24 States shall conduct a study of—



1 section due to an error in the flood plain determination,  
2 the Director may only prospectively charge the higher pre-  
3 mium rate.”.

4 **SEC. 210. REPORT ON CHANGES TO FEE SCHEDULE OR FEE**  
5 **PAYMENT ARRANGEMENTS.**

6 Not later than 3 months after the date of enactment  
7 of this Act, the Director shall submit a report on any  
8 changes or modifications made to the fee schedule or fee  
9 payment arrangements between the Federal Emergency  
10 Management Agency and insurance adjusters who provide  
11 services with respect to flood insurance policies to—

12 (1) the Committee on Banking, Housing, and  
13 Urban Affairs of the Senate; and

14 (2) the Committee on Financial Services of the  
15 House of Representatives.

Passed the Senate June 15, 2004.

Attest:

*Secretary.*

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

---

---

**S. 2238**

**AN ACT**

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.