

112TH CONGRESS
1ST SESSION

S. 1091

To amend the National Flood Insurance Act of 1968 to include a system for indeterminate loss insurance claims, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2011

Mr. WICKER introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the National Flood Insurance Act of 1968 to include a system for indeterminate loss insurance claims, and for other purposes.

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

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

Sec. 1. Table of contents.

TITLE I—COASTAL ACT

Sec. 101. Short title.

Sec. 102. Assessing and modeling named storms over coastal lands.

Sec. 103. Alternative loss allocation system for indeterminate claims.

TITLE II—FLOOD INSURANCE REAUTHORIZATION

Sec. 201. Short title.

Sec. 202. Extensions.

Sec. 203. Reform of premium rates for newly insured and lapsed policies.

- Sec. 204. Premium rate adjustment for current policyholders.
 Sec. 205. State chartered financial institutions.
 Sec. 206. Enforcement.
 Sec. 207. Escrow of flood insurance payments.
 Sec. 208. Removal of limitation on State contributions for updating flood maps.
 Sec. 209. Notice of flood insurance availability under RESPA.
 Sec. 210. Reiteration of FEMA responsibilities under the 2004 Reform Act.

1 **TITLE I—COASTAL ACT**

2 **SEC. 101. SHORT TITLE.**

3 This title may be cited as the “Consumer Option for
 4 an Alternative System To Allocate Losses Act of 2011”
 5 or the “COASTAL Act of 2011”.

6 **SEC. 102. ASSESSING AND MODELING NAMED STORMS** 7 **OVER COASTAL LANDS.**

8 Subtitle C of title XII of the Omnibus Public Land
 9 Management Act of 2009 (33 U.S.C. 3601 et seq.) (also
 10 known as the “Integrated Coastal and Ocean Observation
 11 System Act of 2009”) is amended by adding at the end
 12 the following:

13 **“SEC. 12312. ASSESSING AND MODELING NAMED STORMS** 14 **OVER COASTAL LANDS.**

15 “(a) DEFINITIONS.—In this section:

16 “(1) COASTAL WATERS.—The term ‘coastal wa-
 17 ters’ has the meaning given the term in section 304
 18 of the Coastal Zone Management Act of 1972 (16
 19 U.S.C. 1453).

20 “(2) COASTAL ZONE.—The term ‘coastal
 21 zone’—

1 “(A) means the shorelands adjacent to
2 coastal waters; and

3 “(B) includes lands for which States have
4 developed a management program as such term
5 is defined in such section 304 (16 U.S.C.
6 1453).

7 “(3) COVERED DATA.—The term ‘covered data’
8 means, with respect to a named storm in the coastal
9 zone, empirical data that are—

10 “(A) collected before, during, or after such
11 storm in coastal waters and in the coastal zone;
12 and

13 “(B) necessary to determine magnitude
14 and timing of wind speeds, the barometric pres-
15 sure, river flows, the extent, height, and timing
16 of storm surge, topographic and bathymetric
17 data, and other measures required to accurately
18 model and assess damage from such storm.

19 “(4) NAMED STORM.—The term ‘named storm’
20 means any organized weather system with a defined
21 surface circulation and maximum winds of at least
22 39 miles per hour which the National Hurricane
23 Center of the United States National Weather Serv-
24 ice names as a tropical storm, or a hurricane, that
25 threatens any portion of the coastal zone.

1 “(5) NAMED STORM EVENT MODEL.—The term
2 ‘Named Storm Event Model’ means the official me-
3 teorological and oceanographic computerized model,
4 developed by the Administrator under subsection
5 (b)(1)(A), which utilizes covered data to replicate
6 the magnitude, timing, and spatial variations of
7 winds and storm surges associated with named
8 storms in the coastal zone.

9 “(6) PARTICIPANT.—The term ‘participant’
10 means a Federal, State, or private entity that choos-
11 es to cooperate with the Administrator in carrying
12 out the provisions of this section by collecting, con-
13 tributing, and maintaining covered data.

14 “(7) POST-EVENT ASSESSMENT.—The term
15 ‘post-event assessment’ means a scientific assess-
16 ment produced and certified by the Administrator to
17 determine the magnitude, timing, and spatial vari-
18 ations of winds and storm surges associated with a
19 specific named storm to be used in the loss alloca-
20 tion formula established by the Secretary of Home-
21 land Security under section 1333(b)(2) of the Na-
22 tional Flood Insurance Act of 1968 (42 U.S.C.
23 4053(b)(2)).

1 “(8) STATE.—The term ‘State’ means each of
2 the several States of the United States or the Dis-
3 trict of Columbia.

4 “(b) NAMED STORM EVENT MODEL AND POST-
5 EVENT ASSESSMENT.—

6 “(1) ESTABLISHMENT OF NAMED STORM
7 EVENT MODEL.—

8 “(A) IN GENERAL.—Not later than 540
9 days after the date of the enactment of the
10 COASTAL Act of 2011, the Administrator
11 shall develop by regulation and employ a gener-
12 alized assessment model for determining the
13 magnitude and temporal and spatial variations
14 of storm surges and wind speeds associated
15 with named storms.

16 “(B) DESIGNATION.—The model developed
17 and employed under subparagraph (A) shall be
18 known as the ‘Named Storm Event Model’.

19 “(C) ACCURACY.—The Named Storm
20 Event Model shall be designed to generate post-
21 event assessments, as provided in paragraph
22 (2), that have a degree of accuracy of not less
23 than 90 percent for every indeterminate loss for
24 which a post-event assessment is utilized.

25 “(2) POST-EVENT ASSESSMENT.—

1 “(A) IDENTIFICATION OF NAMED STORMS
2 THREATENING COASTAL ZONE.—After the es-
3 tablishment of the loss allocation formula under
4 section 1333(b)(2) of the National Flood Insur-
5 ance Act of 1968 (42 U.S.C. 4053(b)(2)), the
6 Administrator shall, in consultation with the
7 Secretary of Homeland Security, identify named
8 storms that may reasonably constitute a threat
9 to any portion of the coastal zone.

10 “(B) POST-EVENT ASSESSMENT RE-
11 QUIRED.—Upon identification of a named
12 storm under subparagraph (A), the Adminis-
13 trator shall develop a post-event assessment for
14 such named storm using the Named Storm
15 Event Model and covered data collected for
16 such named storm pursuant to the protocol es-
17 tablished under subsection (c)(1).

18 “(C) SUBMITTAL OF POST-EVENT ASSESS-
19 MENT.—Not later than 90 days after an identi-
20 fication of a named storm is made under sub-
21 paragraph (A), the Administrator shall submit
22 to the Secretary of Homeland Security the post-
23 event assessment developed for such storm
24 under subparagraph (B).

1 “(3) ACCURACY.—The Administrator shall en-
2 sure, to the greatest extent practicable, that each
3 post-event assessment developed under paragraph
4 (2) has a degree of accuracy of not less than 90 per-
5 cent.

6 “(4) CERTIFICATION.—For each post-event as-
7 sessment, the Administrator shall—

8 “(A) certify the degree of accuracy for
9 such assessment, including specific reference to
10 any segments or geographic areas for which the
11 assessment is less than 90 percent accurate;
12 and

13 “(B) report such certification to the Sec-
14 retary of Homeland Security for the purposes
15 of settling indeterminate loss claims under sec-
16 tion 3(c)(1) of the COASTAL Act of 2011.

17 “(5) FINALITY OF DETERMINATIONS.—A cer-
18 tification of, or determination not to certify, the de-
19 gree of accuracy of a post-event assessment under
20 this subsection by the Administrator shall be final
21 and shall not be subject to judicial review.

22 “(6) AVAILABILITY.—The Administrator shall
23 make available to the public the Named Storm
24 Event Model and any post-event assessment devel-
25 oped under this subsection.

1 “(c) ESTABLISHMENT OF A PROTOCOL FOR POST-
2 EVENT ASSESSMENT.—

3 “(1) IN GENERAL.—Not later than 540 days
4 after the date of the enactment of the COASTAL
5 Act of 2011, the Administrator shall establish a pro-
6 tocol, based on the plan submitted under subsection
7 (d)(3), to collect and assemble all covered data re-
8 quired by the Administrator to produce post-event
9 assessments required by subsection (b), including as-
10 sembling data collected by participants and stored in
11 the database established under subsection (f) and
12 from such other sources as the Administrator con-
13 siders appropriate.

14 “(2) ACQUISITION OF SENSORS AND STRUC-
15 TURES.—If the Administrator is unable to use a
16 public or private asset to obtain covered data as part
17 of the protocol established under paragraph (1), the
18 Administrator may acquire such sensors and struc-
19 tures for the placement of sensors as may be nec-
20 essary to obtain such data.

21 “(3) USE OF FEDERAL ASSETS.—If the protocol
22 requires placement of a sensor to develop assess-
23 ments pursuant to subsection (b), the Administrator
24 shall, to the extent practicable, use Federal assets
25 for the placement of such sensors.

1 “(4) USE OF ACQUIRED STRUCTURES.—

2 “(A) IN GENERAL.—If the Administrator
3 acquires a structure for the placement of a sen-
4 sor for purposes of such protocol, the Adminis-
5 trator shall to the extent practical permit other
6 public and private entities to place sensors on
7 such structure to collect—

8 “(i) meteorological data;

9 “(ii) national security-related data;

10 “(iii) navigation-related data;

11 “(iv) hydrographic data; or

12 “(v) such other data as the Adminis-
13 trator considers appropriate.

14 “(B) RECEIPT OF CONSIDERATION.—The
15 Administrator may receive consideration for the
16 placement of a sensor on a structure under sub-
17 paragraph (A).

18 “(C) IN-KIND CONSIDERATION.—Consider-
19 ation received under subparagraph (B) may be
20 received in-kind.

21 “(D) USE OF CONSIDERATION.—To the
22 extent practicable, consideration received under
23 subparagraph (B) shall be used for the mainte-
24 nance of sensors used to collect covered data.

1 “(5) COORDINATED DEPLOYMENTS AND DATA
2 COLLECTION PRACTICES.—The Administrator shall,
3 in consultation with the Office of the Federal Coor-
4 dinator for Meteorology, coordinate the deployment
5 of sensors as part of the protocol established under
6 paragraph (1) and related data collection carried out
7 by Federal, State, academic, and private entities
8 who choose to cooperate with the Administrator in
9 carrying out this subsection.

10 “(6) PRIORITY ACQUISITION AND DEPLOY-
11 MENT.—The Administrator shall give priority in the
12 acquisition for and deployment of sensors under the
13 protocol required by paragraph (1) to areas of the
14 coastal zone that have the highest risk of being
15 harmed by named storms.

16 “(d) ASSESSMENT OF SYSTEMS AND EFFORTS TO
17 COLLECT COVERED DATA.—

18 “(1) IDENTIFICATION OF SYSTEMS AND EF-
19 FORTS TO COLLECT COVERED DATA.—Not later
20 than 180 days after the date of the enactment of the
21 COASTAL Act of 2011, the Administrator shall, in
22 consultation with the Office of the Federal Coordi-
23 nator for Meteorology—

1 “(A) carry out a survey to identify all Fed-
2 eral and State efforts and systems that are ca-
3 pable of collecting covered data; and

4 “(B) work with private and academic sec-
5 tor entities to identify domestic private and aca-
6 demic systems that are capable of collecting
7 covered data.

8 “(2) IDENTIFICATION OF GAPS.—The Adminis-
9 trator shall, in consultation with the Office of the
10 Federal Coordinator for Meteorology and individuals
11 and entities consulted under subsection (e)(3), as-
12 sess the systems identified under paragraph (1) and
13 identify which systems meet the needs of the Na-
14 tional Oceanic and Atmospheric Administration for
15 the collection of covered data, including with respect
16 to the accuracy requirement for post-event assess-
17 ment under subsection (b)(3).

18 “(3) PLAN.—Not later than 270 days after the
19 date of the enactment of the COASTAL Act of
20 2011, the Administrator shall, in consultation with
21 the Office of the Federal Coordinator for Meteor-
22 ology, submit to Congress a plan for the collection
23 of covered data necessary to develop the Named
24 Storm Event Model and post-event assessment re-

1 quired by subsection (b) that addresses any gaps
2 identified in paragraph (2).

3 “(e) COORDINATION OF COVERED DATA COLLEC-
4 TION AND MAINTENANCE BY PARTICIPANTS.—

5 “(1) IN GENERAL.—The Administrator shall, in
6 consultation with the Office of the Federal Coordi-
7 nator for Meteorology, coordinate the collection and
8 maintenance of covered data by participants under
9 this section—

10 “(A) to streamline the process of collecting
11 covered data in accordance with the protocol es-
12 tablished under subsection (c)(1); and

13 “(B) to maintain transparency of such
14 process and the database established under sub-
15 section (f).

16 “(2) SHARING INFORMATION.—The Adminis-
17 trator shall establish a process for sharing among
18 participants information relevant to collecting and
19 using covered data for—

20 “(A) academic research;

21 “(B) private sector use;

22 “(C) public outreach; and

23 “(D) such other purposes as the Adminis-
24 trator considers appropriate.

1 “(3) CONSULTATION.—In carrying out para-
2 graphs (1) and (2), the Administrator shall consult
3 with the following:

4 “(A) The Commanding General of the
5 United States Army Corps of Engineers.

6 “(B) The Administrator of the Federal
7 Emergency Management Agency.

8 “(C) The Commandant of the Coast
9 Guard.

10 “(D) The Director of the United States
11 Geological Survey.

12 “(E) The Office of the Federal Coordi-
13 nator for Meteorology.

14 “(F) The Director of the National Science
15 Foundation.

16 “(G) The Administrator of the National
17 Aeronautics and Space Administration.

18 “(H) Such public, private, and academic
19 sector entities as the Administrator considers
20 appropriate for purposes of carrying out the
21 provisions of this section.

22 “(f) ESTABLISHMENT OF COASTAL WIND AND
23 WATER EVENT DATABASE.—

24 “(1) IN GENERAL.—Not later than 365 days
25 after the date of the enactment of the COASTAL

1 Act of 2011, the Administrator shall establish a
2 database for the collection and compilation of cov-
3 ered data—

4 “(A) to support the protocol established
5 under subsection (c)(1); and

6 “(B) for the purposes listed in subsection
7 (e)(2).

8 “(2) DESIGNATION.—The database established
9 under paragraph (1) shall be known as the ‘Coastal
10 Wind and Water Event Database’.

11 “(g) COMPTROLLER GENERAL STUDY.—Not later
12 than 365 days after the date of the enactment of the
13 COASTAL Act of 2011, the Comptroller General of the
14 United States shall—

15 “(1) complete an audit of Federal efforts to col-
16 lect covered data, which audit shall—

17 “(A) examine duplicated Federal efforts to
18 collect covered data; and

19 “(B) determine the cost effectiveness of
20 such efforts; and

21 “(2) submit to the Committee on Commerce,
22 Science, and Transportation of the Senate and the
23 Committee on Science, Space, and Technology of the
24 House of Representatives a report on the findings of

1 the Comptroller General with respect to the audit
2 completed under paragraph (1).”.

3 **SEC. 103. ALTERNATIVE LOSS ALLOCATION SYSTEM FOR**
4 **INDETERMINATE CLAIMS.**

5 Section 1333 of the National Flood Insurance Act of
6 1968 (42 U.S.C. 4053) is amended—

7 (a) by striking “The insurance companies” and in-
8 serting “(a) IN GENERAL.—The insurance companies”;
9 and

10 (b) by adding at the end the following:

11 “(b) ALTERNATIVE LOSS ALLOCATION SYSTEM FOR
12 INDETERMINATE CLAIMS.—

13 “(1) DEFINITIONS.—In this subsection:

14 “(A) INDETERMINATE LOSS.—

15 “(i) IN GENERAL.—The term ‘indeter-
16 minate loss’ means, as determined by an
17 insurance claims adjuster, a loss resulting
18 from physical damage to or loss of prop-
19 erty related thereto located in any State
20 arising from the combined perils of flood
21 and wind associated with a named storm.

22 “(ii) REQUIREMENTS.—An insurance
23 claims adjuster shall only determine that a
24 loss is an indeterminate loss if the claims
25 adjuster determines that—

1 “(I) no material remnant of
2 physical buildings or man-made struc-
3 tures remain except building founda-
4 tions for the specific property for
5 which the indeterminate claim is
6 made; and

7 “(II) there is insufficient or no
8 tangible evidence created, yielded, or
9 otherwise left behind as a result of the
10 named storm.

11 “(iii) RESOLUTION OF DISPUTES RE-
12 GARDING INDETERMINATE LOSS DETER-
13 MINATIONS.—For any determination of, or
14 determination not to qualify, a loss as an
15 indeterminate loss by an insurance claims
16 adjuster, or any dispute between a policy-
17 holder and an insurance claims adjuster
18 regarding such a determination, or any
19 dispute between insurance claims adjusters
20 regarding such a determination, the policy-
21 holder or insurer may, not later than 30
22 days after receiving notice of such deter-
23 mination, file an appeal with the arbitra-
24 tion panel established under paragraph
25 (6).

1 “(iv) CIVIL PENALTY.—In carrying
2 out any determination relating to an inde-
3 terminate loss, any insurance claims ad-
4 juster that knowingly and willfully makes a
5 false or inaccurate determination shall be
6 subject to a civil penalty in an amount not
7 to exceed \$10,000.

8 “(B) NAMED STORM.—The term ‘named
9 storm’ has the meaning given the term in sec-
10 tion 12312(a) of the Omnibus Public Land
11 Management Act of 2009.

12 “(C) PROPERTY.—The term ‘property’
13 means real or personal property that is insured
14 under a standard insurance policy for loss or
15 damage to structure and contents.

16 “(D) SECRETARY.—The term ‘Secretary’
17 means the Secretary of Homeland Security.

18 “(E) STANDARD INSURANCE POLICY.—The
19 term ‘standard insurance policy’ means any in-
20 surance policy that covers loss or damage to an
21 insured structure or contents resulting from
22 wind peril (including a State wind pool), water
23 peril (including insurance provided under this
24 title and private insurance that covers water
25 peril), or both wind and water perils.

1 “(F) STATE WIND POOL.—The term ‘State
2 wind pool’ means an entity sponsored, run, or
3 controlled by a State for the purposes of selling
4 wind insurance in a standard insurance policy.

5 “(G) UNDER SECRETARY.—The term
6 ‘Under Secretary’ means the Under Secretary
7 for Oceans and Atmosphere.

8 “(2) ESTABLISHMENT OF LOSS ALLOCATION
9 FORMULA.—

10 “(A) IN GENERAL.—Not later than 180
11 days after the establishment of the protocol es-
12 tablished in subsection (c)(1) of section 12312
13 of the Omnibus Public Land Management Act
14 of 2009, the Secretary shall, in consultation
15 with the Under Secretary, establish by rule a
16 system for allocating losses among—

17 “(i) any insurer (including a State
18 wind pool) that insures losses due to wind
19 peril, or both wind and water peril; and

20 “(ii) any insurer (including the Fed-
21 eral Emergency Management Agency and
22 NFIP Direct) issuing a standard insurance
23 policy that insures losses due to water peril
24 for properties that may also be insured
25 against losses caused by wind peril through

1 another insurer, solely with respect to the
2 amount of losses due to flood insured
3 under this title.

4 “(B) USE OF POST-EVENT ASSESSMENT.—
5 The loss allocation system established under
6 subparagraph (A) shall—

7 “(i) incorporate data available from
8 the Coastal Wind and Water Event Data-
9 base established under subsection (f) of
10 section 12312 of the Omnibus Public Land
11 Management Act of 2009; and

12 “(ii) for each indeterminate loss, uti-
13 lize the post-event assessment developed
14 under subsection (b)(2) of such section
15 12312, to allocate water damage (flood or
16 storm surge), associated with a named
17 storm, and wind damage associated with
18 the same named storm if the Under Sec-
19 retary certifies such post-event assessment
20 as having a degree of accuracy of not less
21 than 90 percent in connection with the
22 specific indeterminate loss for which such
23 assessment is utilized.

24 “(C) APPLICATION OF POST-EVENT AS-
25 SESSMENT.—In applying the post-event assess-

1 ment developed under subsection (b)(2) of sec-
2 tion 12312 of the Omnibus Public Land Man-
3 agement Act of 2009 in accordance with sub-
4 paragraph (B), the Secretary shall develop a
5 standard formula to determine the loss alloca-
6 tion for a specific property. Such formula shall
7 consider—

8 “(i) relevant data provided on the
9 FEMA Elevation Certificate for each inde-
10 terminate loss determined under this sub-
11 section;

12 “(ii) any sufficient and credible evi-
13 dence, approved by the Secretary, of the
14 pre-event condition of a specific property,
15 including the findings of any policyholder
16 or insurance claims adjuster in connection
17 with the indeterminate loss to that specific
18 property; and

19 “(iii) other measures required to de-
20 termine and allocate, by mathematical for-
21 mula, property damage caused by wind
22 and property damage caused by water as-
23 sociated with the same named storm.

1 “(D) CONSULTATION.—In carrying out
2 subparagraph (A), the Secretary shall consult
3 with the following:

4 “(i) The Director of the National In-
5 stitute of Standards and Technology.

6 “(ii) Such public, private, and aca-
7 demic sector entities as the Secretary con-
8 siders appropriate for purposes of carrying
9 out provisions of such paragraph.

10 “(E) REQUIREMENT.—Each consideration
11 and measure the Secretary determines nec-
12 essary to carry out the requirements of sub-
13 paragraph (A), pursuant to subparagraph (C),
14 shall be provided for on the National Flood In-
15 surance Program Elevation Certificate, or
16 maintained otherwise on record if approved by
17 the Secretary, for any properties that qualify
18 for the alternative loss allocation for indetermi-
19 nate losses under this subsection.

20 “(F) ADMINISTRATIVE PROCEDURE.—The
21 loss allocation system established under sub-
22 paragraph (A) shall be promulgated by rule in
23 accordance with section 553 of title 5, United
24 States Code.

1 “(3) ALLOCATION OF INDETERMINATE
2 CLAIMS.—For each indeterminate loss—

3 “(A) any insurer (including the Federal
4 Emergency Management Agency and NFIP Di-
5 rect) issuing a standard insurance policy that
6 insures losses due to water peril for properties
7 that may also be insured against losses caused
8 by wind peril through another insurer, solely
9 with respect to the amount of losses due to
10 flood insured under this title, shall allocate pay-
11 ments to policyholders in accordance with the
12 method or methods established by the Secretary
13 pursuant to paragraph (2)(A);

14 “(B) any insurer required to allocate losses
15 due to flood under subparagraph (A) that also
16 insures losses due to wind peril under a stand-
17 ard insurance policy shall, with respect to any
18 property for which it issues both flood and wind
19 coverage, allocate payments to policyholders for
20 losses due to wind peril in accordance with the
21 method or methods established by the Secretary
22 pursuant to paragraph 2(A);

23 “(C) any insurer that utilizes the services
24 of insurance agents who—

1 “(i) work exclusively or predominately
2 for that insurer, and

3 “(ii) service flood insurance business
4 directly through the National Flood Insur-
5 ance Program Servicing Agent,
6 shall allocate payments to policyholders that
7 purchase flood coverage through such agents in
8 accordance with the method or methods estab-
9 lished by the Secretary pursuant to paragraph
10 (2)(A);

11 “(D) all other insurers may elect to allo-
12 cate losses to policyholders in accordance with
13 the system established by the Secretary pursu-
14 ant to paragraph (2)(A) if—

15 “(i) such election is made by an in-
16 surer prior to the time of purchase or re-
17 newal of the applicable policy by the policy
18 holder; and

19 “(ii) the policyholder is given notice of
20 such election by the insurer; and

21 “(E) the amount of any claim settled by
22 any insurer of a standard insurance policy with
23 regard to an allocation of payments made pur-
24 suant to subparagraphs (A), (B), (C), or (D)
25 shall be final and not subject to judicial review.

1 “(4) APPEAL OF LOSS ALLOCATION DETER-
2 MINATION.—

3 “(A) IN GENERAL.—If a policyholder or an
4 insurer of a standard insurance policy partici-
5 pating in the loss allocation system established
6 under paragraph (2) is unsatisfied with the al-
7 location of losses made pursuant to subpara-
8 graphs (A), (B), (C), or (D) of paragraph (3),
9 due to sufficient and credible evidence not con-
10 sidered in such allocation of losses, the policy-
11 holder or insurer may, not later than 30 days
12 after receiving notice of such allocation, file an
13 appeal with the arbitration panel established
14 under paragraph (6).

15 “(B) LIMITATION.—An appeal filed under
16 subparagraph (A) may only be filed with re-
17 spect to the amount of any claim determined
18 pursuant to this subsection, and no appeal shall
19 be heard or accepted with respect to the valid-
20 ity, efficacy, applicability, or use of the loss al-
21 location formula established under paragraph
22 (2).

23 “(5) LOSS ALLOCATION AND PAYMENT OF POL-
24 ICYHOLDER CLAIMS PRIOR TO DETERMINATION.—

1 “(A) GOOD FAITH ALLOCATIONS.—Noth-
2 ing in this subsection shall be construed to pro-
3 hibit an insurer (including a State wind pool)
4 from—

5 “(i) allocating losses in good faith
6 with respect to a specific property prior to
7 the determination of the indeterminate loss
8 allocation for such property under this
9 subsection;

10 “(ii) paying policyholder claims for
11 losses to such property based on the good
12 faith allocation under clause (i), provided
13 that such payment does not exceed the
14 lowest coverage limit amount for a loss
15 under the standard insurance policy of the
16 policyholder; and

17 “(iii) immediately after the determina-
18 tion of the indeterminate loss allocation for
19 such property under this subsection recon-
20 ciling amounts paid to the policyholder to
21 conform with such indeterminate loss allo-
22 cation determination.

23 “(B) SETTLEMENT OF CLAIMS NOT DE-
24 TERMINED TO BE INDETERMINATE LOSSES.—

1 “(i) IN GENERAL.—If a claim with re-
2 spect to a specific property is settled by an
3 insurer (including a State wind pool or an
4 insurer of a standard insurance policy)
5 pursuant to subparagraph (A), and it is
6 later determined the specific property does
7 not qualify for the loss allocation formula
8 pursuant to this subsection, the insurer
9 and the Secretary shall work in good faith
10 to settle the claim.

11 “(ii) RESOLUTION OF DISPUTES.—If
12 during the process of settling a claim
13 under clause (i) there arises a dispute be-
14 tween any of the parties involved in that
15 claim, any such party may file an action to
16 have such dispute settled by the arbitration
17 panel established under paragraph (6).

18 “(6) ARBITRATION PANEL.—

19 “(A) ESTABLISHMENT.—The Adminis-
20 trator of the Federal Emergency Management
21 Agency shall establish an arbitration panel to
22 efficiently and clearly resolve—

23 “(i) appeals relating to the loss alloca-
24 tion system for resolving indeterminate

1 claims established under this subsection;
2 and

3 “(ii) any other actions brought to the
4 panel pursuant to this subsection.

5 “(B) MEMBERSHIP.—The arbitration
6 panel established under subparagraph (A) shall
7 be comprised of 5 members.

8 “(C) ADMINISTRATIVE LAW EXPERTISE
9 REQUIRED.—At least 1 member of the arbitra-
10 tion panel established under subparagraph (A)
11 shall have expertise in administrative law.

12 “(D) NO FEMA EMPLOYEES.—No member
13 of the arbitration panel established under sub-
14 paragraph (A) may be a current employee of
15 the Federal Emergency Management Agency.

16 “(E) INDEPENDENCE.—Each member of
17 the arbitration panel established under subpara-
18 graph (A) shall be independent and neutral.

19 “(7) OPT-OUT.—After the date of enactment of
20 this subsection, and only after the occurrence of a
21 named storm, if there is mutual agreement between
22 an insurer and its insured policyholder, such parties
23 may elect to opt out of the requirements of this sub-
24 section, provided that the document or form used to

1 represent such agreement is approved in advance by
2 the Secretary.

3 “(8) OPT-IN.—Nothing in this subsection shall
4 be construed to prevent or prohibit an insurer (in-
5 cluding a State wind pool or an insurer of a stand-
6 ard insurance policy) from allocating all losses asso-
7 ciated with a named storm pursuant to the require-
8 ments of this subsection.

9 “(9) RULE OF CONSTRUCTION.—Nothing in
10 this subsection shall be construed to negate, set
11 aside, or void any policy limit, including any loss
12 limitation, set forth in a standard insurance policy
13 (including such policies covering wind and water,
14 State wind pool, and any insurance policy provided
15 in accordance with this title).

16 “(10) APPLICABILITY.—Paragraph (3) shall
17 apply with respect to named storms that occur after
18 the establishment of the indeterminate loss alloca-
19 tion formula pursuant to paragraph (2).”.

20 **TITLE II—FLOOD INSURANCE**
21 **REAUTHORIZATION**

22 **SEC. 201. SHORT TITLE.**

23 This title may be cited as the “Flood Insurance Reau-
24 thorization Act of 2011”.

1 **SEC. 202. EXTENSIONS.**

2 (a) EXTENSION OF PROGRAM.—Section 1319 of the
3 National Flood Insurance Act of 1968 (42 U.S.C. 4026)
4 is amended by striking “September 30, 2011” and insert-
5 ing “September 30, 2016”.

6 (b) EXTENSION OF FINANCING.—Section 1309(a) of
7 such Act (42 U.S.C. 4016(a)) is amended by striking
8 “September 30, 2011” and inserting “September 30,
9 2016”.

10 **SEC. 203. REFORM OF PREMIUM RATES FOR NEWLY IN-**
11 **SURED AND LAPSED POLICIES.**

12 (a) IN GENERAL.—Section 1307 of the National
13 Flood Insurance Act of 1968 (42 U.S.C. 4014) is amended
14 by adding at the end the following:

15 “(g) NO EXTENSION OF SUBSIDY TO NEW POLICIES
16 OR LAPSED POLICIES.—The Director shall not provide
17 flood insurance to prospective insureds at rates less than
18 those estimated under subsection (a)(1), as required by
19 paragraph (2) of that subsection, for—

20 “(1) any property not insured by the flood in-
21 surance program as of the date of enactment of the
22 Flood Insurance Reauthorization Act of 2011; and

23 “(2) any policy under the flood insurance pro-
24 gram that has lapsed in coverage, as a result of the
25 deliberate choice of the holder of such policy.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 paragraph (1) shall become effective 90 days after the
3 date of the enactment of this title.

4 **SEC. 204. PREMIUM RATE ADJUSTMENT FOR CURRENT**
5 **POLICYHOLDERS.**

6 Section 1308 of the National Flood Insurance Act of
7 1968 (42 U.S.C. 4015) is amended by adding at the end
8 the following:

9 “(g) PREMIUM ADJUSTMENT TO REFLECT CURRENT
10 RISK OF FLOOD.—Notwithstanding subsection (f), and
11 upon completion of the updating of any flood insurance
12 rate map under this Act or the Flood Disaster Protection
13 Act of 1973, any property located in an area that is par-
14 ticipating in the national flood insurance program shall
15 have the risk premium rate charged for flood insurance
16 on such property adjusted to accurately reflect the current
17 risk of flood to such property, subject to any other provi-
18 sion of this Act. Any increase in the risk premium rate
19 charged for flood insurance on any property that is cov-
20 ered by a flood insurance policy on the date of completion
21 of such updating or remapping that is a result of such
22 updating or remapping shall be phased in over a 5-year
23 period at the rate of 20 percent per year.”.

1 **SEC. 205. STATE CHARTERED FINANCIAL INSTITUTIONS.**

2 Section 1305(c) of the National Flood Insurance Act
3 of 1968 (42 U.S.C. 4012(c)) is amended—

4 (1) in paragraph (1), by striking “; and” and
5 inserting a semicolon;

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

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

9 “(3) given satisfactory assurance that by De-
10 cember 31, 2012, lending institutions chartered by a
11 State, and not insured by the Federal Deposit Insur-
12 ance Corporation or by the National Credit Union
13 Share Insurance Fund administered by the National
14 Credit Union Administration, shall be subject to reg-
15 ulations by that State that are consistent with the
16 requirements of section 102 of the Flood Disaster
17 Protection Act of 1973 (42 U.S.C. 4012a).”.

18 **SEC. 206. ENFORCEMENT.**

19 Section 102(f)(5) of the Flood Disaster Protection
20 Act of 1973 (42 U.S.C. 4012a(f)(5)) is amended—

21 (1) in the first sentence, by striking “\$350”
22 and inserting “\$2,000”; and

23 (2) by striking the second sentence.

1 **SEC. 207. ESCROW OF FLOOD INSURANCE PAYMENTS.**

2 (a) IN GENERAL.—Section 102(d) of the Flood Dis-
3 aster Protection Act of 1973 (42 U.S.C. 4012a(d)) is
4 amended—

5 (1) by amending paragraph (1) to read as fol-
6 lows:

7 “(1) REGULATED LENDING INSTITUTIONS.—

8 “(A) FEDERAL ENTITIES RESPONSIBLE
9 FOR LENDING REGULATIONS.—Each Federal
10 entity for lending regulation (after consultation
11 and coordination with the Federal Financial In-
12 stitutions Examination Council) shall, by regu-
13 lation, direct that any premiums and fees for
14 flood insurance under the National Flood Insur-
15 ance Act of 1968, on any property for which a
16 loan has been made for acquisition or construc-
17 tion purposes, shall be paid to the mortgage
18 lender, with the same frequency as payments on
19 the loan are made, for the duration of the loan.
20 Upon receipt of any premiums or fees, the lend-
21 er shall deposit such premiums and fees in an
22 escrow account on behalf of the borrower. Upon
23 receipt of a notice from the Director or the pro-
24 vider of the flood insurance that insurance pre-
25 miums are due, the remaining balance of an es-

1 crow account shall be paid to the provider of
2 the flood insurance.

3 “(B) STATE ENTITIES RESPONSIBLE FOR
4 LENDING REGULATIONS.—In order to continue
5 to participate in the flood insurance program,
6 each State shall direct that its entity or agency
7 with primary responsibility for the supervision
8 of lending institutions in that State require that
9 premiums and fees for flood insurance under
10 the National Flood Insurance Act of 1968, on
11 any property for which a loan has been made
12 for acquisition or construction purposes shall be
13 paid to the mortgage lender, with the same fre-
14 quency as payments on the loan are made, for
15 the duration of the loan. Upon receipt of any
16 premiums or fees, the lender shall deposit such
17 premiums and fees in an escrow account on be-
18 half of the borrower. Upon receipt of a notice
19 from such State entity or agency, the Director,
20 or the provider of the flood insurance that in-
21 surance premiums are due, the remaining bal-
22 ance of an escrow account shall be paid to the
23 provider of the flood insurance.”; and
24 (2) by adding at the end the following:

1 trator of the Federal Emergency Management Agency
2 shall submit a report to Congress—

3 (1) describing the implementation of each provi-
4 sion of the Bunning-Bereuter-Blumenauer Flood In-
5 surance Reform Act of 2004 (Public Law 108–264;
6 118 Stat. 712);

7 (2) identifying each regulation, order, notice,
8 and other material issued by the Administrator in
9 implementing each provision of that Act;

10 (3) explaining any statutory or implied dead-
11 lines that have not been met; and

12 (4) providing an estimate of when the require-
13 ments of such missed deadlines will be fulfilled.

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