

NATIONAL FLOOD INSURANCE PROGRAM
ADMINISTRATIVE REFORM ACT OF 2019

OCTOBER 28, 2019.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 3111]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3111) 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 with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “National Flood Insurance Program Administrative Reform Act of 2019”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Pilot program for properties with preexisting conditions.
- Sec. 3. Penalties for fraud and false statements in the National Flood Insurance Program.
- Sec. 4. Enhanced policyholder appeals process rights.
- Sec. 5. Deadline for approval of claims.
- Sec. 6. Litigation process oversight and reform.
- Sec. 7. Prohibition on hiring disbarred attorneys.
- Sec. 8. Technical assistance reports.
- Sec. 9. Improved disclosure requirement for standard flood insurance policies.
- Sec. 10. Reserve Fund amounts.
- Sec. 11. Sufficient staffing for Office of Flood Insurance Advocate.
- Sec. 12. Federal Flood Insurance Advisory Committee.
- Sec. 13. Interagency guidance on compliance.
- Sec. 14. GAO study of claims adjustment practices.
- Sec. 15. GAO study of flood insurance coverage treatment of earth movement.
- Sec. 16. Definitions.

SEC. 2. PILOT PROGRAM FOR PROPERTIES WITH PREEXISTING CONDITIONS.

Section 1311 of the National Flood Insurance Act of 1968 (42 U.S.C. 4018) is amended by adding at the end the following new subsection:

“(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, 2023, 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, 2024.

“(5) **FINAL REPORT.**—Not later than March 31, 2025, 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.”.

SEC. 3. PENALTIES FOR FRAUD AND FALSE STATEMENTS IN THE NATIONAL FLOOD INSURANCE PROGRAM.

Part C of chapter II of the National Flood Insurance Act of 1968 (42 U.S.C. 4081 et seq.) is amended by adding at the end the following new section:

“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, fictitious, or fraudulent 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 that results in a wrongful denial or substantial payment error of flood insurance coverage; and

“(3) knowingly submitting a materially false, fictitious, or fraudulent claim that results in wrongful payment of flood insurance coverage.

“(b) DEFINITION.—For purposes of this section, the term ‘knowingly’ means having actual awareness of the prohibitions under this part and acting deliberately in violation of such prohibitions.

“(c) ADMINISTRATIVE REMEDY.—Prior to any legal action being taken related to this section, all administrative remedies shall be exhausted.

“(d) RULE OF CONSTRUCTION.—This section shall not be construed—

“(1) to prevent the Federal Government from bringing action against a company or individual under applicable statutes, including the False Claims Act; and

“(2) as creating any action, private right of action, or remedy not otherwise provided by this title or under Federal law.

“(e) STATE ACTION.—Any person found to have violated subsection (a) shall be referred to the appropriate and relevant State licensing agency by the Attorney General.”

SEC. 4. ENHANCED POLICYHOLDER APPEALS PROCESS RIGHTS.

(a) ESTABLISHMENT.—Part C of chapter II of the National Flood Insurance Act of 1968 (42 U.S.C. 4081 et seq.), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new section:

“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 decisions, with respect to the disallowance, in whole or in part, of any claims for losses covered by flood insurance. Such appeals shall be limited to the claim or portion of the claim disallowed.

“(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, modify, or overturn the decision. The Administrator may direct the Write Your Own company to take action necessary to resolve the appeal, to include re-inspection, re-adjustment, or payment, as appropriate.

“(c) DEADLINE FOR APPEALS DECISION.—The Administrator shall issue an appeals decision pursuant to subsection (b) not later than the expiration of the 120-day period beginning upon the day on which the Administrator acknowledges receipt of a request by the policyholder to pursue an appeal of the initial determination regarding approval, disapproval, or amount of payment by the Administrator. In cases where extraordinary circumstances, as established by regulation, are demonstrated, the 120-day period may be extended by additional successive periods of 30 days.

“(d) ADMINISTRATIVE REMEDY.—A policyholder shall exhaust all administrative remedies, including submission of disputed claims to appeal under subsection (a), prior to commencing legal action on a disputed claim.

“(e) 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.

“(f) POLICYHOLDER LITIGATION.—This section shall not be construed to prevent a policyholder from bringing legal action against the Federal Emergency Management Agency or a Write Your Own company following the exhaustion of all administrative remedies and pursuant to applicable statute.”

(b) MAINTENANCE OF LITIGATION RIGHTS.—Section 1341 of the National Flood Insurance Act of 1968 (42 U.S.C. 4072) is amended by adding after the period at the end the following: “For purposes of this section, the time from which the Administrator has acknowledged receipt of a request by the policyholder to pursue an appeal of the initial determination regarding approval, disapproval, or amount of payment by the Administrator until the Administrator mails a final determination of such

appeal shall not be considered towards the one year statute of limitation under this Act. However, this section shall not be construed as creating any action or remedy not otherwise provided by this title.”.

(c) REPEAL.—Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note) is hereby repealed.

SEC. 5. DEADLINE FOR APPROVAL OF CLAIMS.

(a) IN GENERAL.—Section 1312 of the National Flood Insurance Act of 1968 (42 U.S.C. 4019) is amended—

(1) in subsection (a), by striking “The Administrator” and inserting “Subject to other provisions of this section, the Administrator”; and

(2) by adding at the end the following new subsection:

“(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, an initial 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 120-day period (as such period may be extended pursuant to paragraph (2)) beginning upon the day on which the policyholder submits a signed proof of loss detailing the damage and amount of the loss. Payment of approved claims shall be made as soon as possible after such approval.

“(2) EXTENSION OF DEADLINE.—The Administrator shall—

“(A) provide that the period referred to in paragraph (1) may be extended by additional successive periods of 30 days in cases where extraordinary circumstances are demonstrated; and

“(B) establish, by regulation, criteria for demonstrating such extraordinary circumstances.”.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to any claim under flood insurance coverage made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) pending on the date of the enactment of this Act and any claims made after such date of enactment.

SEC. 6. LITIGATION PROCESS OVERSIGHT AND REFORM.

(a) IN GENERAL.—Part C of chapter II of the National Flood Insurance Act of 1968 (42 U.S.C. 4081 et seq.), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new section:

“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) JOINT DEFENSE.—

“(1) AUTHORITY.—The Administrator and the Write Your Own companies may enter into, and operate under, a joint defense agreement for any claim or lawsuit, or multiple claims or lawsuits, arising under a contract of flood insurance.

“(2) FREE FLOW OF INFORMATION.—Under such joint defense agreement, there may be the free flow of information between the Write Your Own companies, the Administrator, the United States Department of Justice, and legal counsel for the Write Your Own companies for the purpose of litigation coordination and to allow the Administrator to perform oversight responsibility of such litigation.

“(3) ARRANGEMENT.—Such joint defense agreement may be included in the Arrangement between the Administrator and the Write Your Own companies.

“(4) REGULATIONS.—The Administrator may issue rules or regulations or provide such formal guidance as the Administrator considers necessary and appropriate in order to further such joint defense agreement with the Write Your Own companies.”.

(b) IMPLEMENTATION.—The Administrator of the Federal Emergency Management Agency shall initiate compliance with section 1351(c) of the National Flood Insurance Act of 1968, as added by the amendment made by subsection (a) of this section, not later than the expiration of the 12-month period beginning on the date of the enactment of this Act.

SEC. 7. PROHIBITION ON HIRING DISBARRED ATTORNEYS.

Part C of chapter II of the National Flood Insurance Act of 1968 (42 U.S.C. 4081 et seq.), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new section:

“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.”.

SEC. 8. TECHNICAL ASSISTANCE REPORTS.

(a) USE.—Section 1312 of the National Flood Insurance Act of 1968 (42 U.S.C. 4019), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsection:

“(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.”.

(b) DISCLOSURE.—The National Flood Insurance Act of 1968 is amended by inserting after section 1312 (42 U.S.C. 4019) the following new section:

“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 accounts.”.

SEC. 9. IMPROVED DISCLOSURE REQUIREMENT FOR STANDARD FLOOD INSURANCE POLICIES.

(a) IN GENERAL.—Section 100234 of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4013a) is amended by adding at the end the following new subsections:

“(c) DISCLOSURE OF COVERAGE.—

“(1) DISCLOSURE SHEET.—Each policy under the National Flood Insurance Program shall include a standard disclosure sheet that is produced by the Administrator 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 acknowledging that a standard flood insurance policy does not cover basement improvements, such as finished walls, floors, and ceilings, or personal property kept in a basement;

“(D) a statement acknowledging a standard flood insurance policy does not include coverage for personal property, but such coverage may be purchased, for some personal property contained in a basement, as well as personal belongings contained elsewhere in the dwelling;

“(E) a statement of the other types and characteristics of losses that are not covered under the policy;

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

“(G) a statement that the standard flood insurance policy, together with the 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;

“(H) a statement that, if the policyholder has any questions regarding information in the disclosure sheet or policy, the policyholder 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; and

“(I) any other information that the Administrator determines will be helpful to policyholder in understanding flood insurance coverage.

“(2) **ACKNOWLEDGMENT SHEET.**—Each policy application under the National Flood Insurance Program shall include an acknowledgment sheet on which the policyholder shall affirmatively—

“(A) acknowledge that the policyholder received the disclosure sheet required under paragraph (1);

“(B) accept or decline coverage for personal property;

“(C) accept or decline other optional coverage that may be available;

“(D) acknowledge the policyholder’s understanding that the standard flood insurance policy, together with the 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 acknowledgment sheet and the information in the policy; and

“(E) acknowledge that the policyholder has been provided and has reviewed a summary, which may be the policy declarations page, of the total cost, amount and extent of insurance coverage provided under the policy.

“(d) **RULE OF CONSTRUCTION.**—This section shall not be construed to void or alter the coverage terms of the underlying standard flood insurance policy and the corresponding endorsements. In the event that the customer does not affirmatively acknowledge the requirements under subsection (c)(2), a Write Your Own company may still issue the policy on behalf of the National Flood Insurance Program under such terms.”.

(b) **REPEALS.**—Sections 202 and 203 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note) are hereby repealed.

SEC. 10. RESERVE FUND AMOUNTS.

Section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017) is amended by adding at the end the following new subsection:

“(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).”.

SEC. 11. SUFFICIENT STAFFING FOR OFFICE OF FLOOD INSURANCE ADVOCATE.

(a) **IN GENERAL.**—Section 24 of the Homeowner Flood Insurance Affordability Act of 2014 (42 U.S.C. 4033) is amended by adding at the end the following new subsection:

“(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.”.

(b) **TIMING.**—The Administrator of the Federal Emergency Management Agency shall take such actions as may be necessary to provide for full compliance with section 24(c) of the Homeowner Flood Insurance Affordability Act of 2014, as added by the amendment made by subsection (a) of this section, not later than the expiration of the 180-day period beginning on the date of the enactment of this Act.

SEC. 12. FEDERAL FLOOD INSURANCE ADVISORY COMMITTEE.

Section 1318 of the National Flood Insurance Act of 1968 (42 U.S.C. 4025) is amended to read as follows:

“SEC. 1318. FEDERAL FLOOD INSURANCE ADVISORY COMMITTEE.

“(a) **ESTABLISHMENT.**—There is established an advisory committee to be known as the Federal Flood Insurance Advisory Committee (in this section referred to as the ‘Committee’).

“(b) **MEMBERSHIP.**—

“(1) **MEMBERS.**—The Committee shall consist of—

“(A) the Administrator of the Federal Emergency Management Agency (in this section referred to as the ‘Administrator’), or the designee thereof; and

“(B) additional members appointed by the Administrator or the designee of the Administrator, who shall include—

- “(i) three representatives of Write Your Own companies;
- “(ii) one individual who served in the past, or is currently serving, as an insurance regulator of a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, or any federally-recognized Indian tribe;
- “(iii) one representative of the financial or insurance sectors who is involved in risk transfers, including reinsurance, resilience bonds, and other insurance-linked securities;
- “(iv) one actuary with demonstrated high-level knowledge of catastrophic risk insurance;
- “(v) two insurance agents or brokers with demonstrated experience with the sale of flood insurance under the National Flood Insurance Program, one of whom shall have demonstrated expertise in the challenges in insuring low-income communities;
- “(vi) one insurance claims specialist;
- “(vii) one representative of a recognized consumer advocacy organization; and
- “(viii) one representative from an academic institution who has demonstrated expertise in insurance.

“(2) QUALIFICATIONS.—In appointing members under paragraph (1)(C), the Administrator shall, to the maximum extent practicable, ensure the membership of the Committee has a balance of members reflecting geographic diversity, including representation from areas inland or with coastline identified by the Administrator as at high risk for flooding or as areas having special flood hazards.

“(c) DUTIES.—The Administrator shall submit, and the Committee shall review and make recommendations on, matters related to the insurance aspects of the National Flood Insurance Program, including ratemaking, technology to administer insurance, risk assessment, actuarial practices, claims practices, sales and insurance delivery, compensation and allowances, the public-private partnership under the Write Your Own arrangement, general best insurance practices, and any significant changes proposed to be made regarding the operation of the National Flood Insurance Program.

“(d) CHAIRPERSON.—The members of the Committee shall elect one member to serve as the chairperson of the Committee (in this section referred to as the ‘Chairperson’).

“(e) COMPENSATION.—Members of the Committee shall receive no additional compensation by reason of their service on the Committee. Members may be reimbursed by the Federal Government for travel expenses, including per diem in lieu of subsistence, at rates consistent with rates authorized for employees of Federal agencies under subchapter 1 of chapter 57 of title 5, United States Code, while away from home or regular places of business in performance of service for the Committee.

“(f) MEETINGS AND ACTIONS.—

“(1) IN GENERAL.—The Committee shall meet not less frequently than twice each year at the request of the Chairperson or a majority of its members, and may take action by a vote of the majority of the members in accordance with the Committee’s charter.

“(2) INITIAL MEETING.—The Administrator, or a person designated by the Administrator, shall request and coordinate the initial meeting of the Committee.

“(g) TRANSPARENCY; FACIA.—To the greatest extent possible, the Committee shall operate in a transparent manner that adheres to the requirements of the Federal Advisory Committee Act, with the exception that the Committee shall be permitted to freely communicate both during and between meetings under paragraph (f) in a confidential manner to discuss non-public information regarding the operations of the National Flood Insurance Program and other sensitive and non-public issues. If such communication occurs, the Committee shall, to the greatest extent possible, report a summary of such discussions in an appropriate public manner.

“(h) STAFF OF FEMA.—Upon the request of the Chairperson, the Administrator may detail, on a nonreimbursable basis, personnel of the Federal Emergency Management Agency to assist the Committee in carrying out its duties.

“(i) POWERS.—In carrying out this section, the Committee may hold hearings, receive evidence and assistance, provide information, and conduct research, as it considers appropriate.

“(j) REPORTS TO CONGRESS.—The Administrator, on an annual basis, shall report to the Committee on Financial Services of the House of Representatives, the Com-

mittee on Banking, Housing, and Urban Affairs of the Senate, and the Office of Management and Budget on—

- “(1) the recommendations made by the Committee;
- “(2) actions taken by the Federal Emergency Management Agency to address such recommendations to improve the insurance aspects of the national flood insurance program; and
- “(3) any recommendations made by the Committee that have been deferred or not acted upon, together with an explanatory statement.

“(k) **RULE OF CONSTRUCTION.**—This section shall not be construed to eliminate or alter any requirement on the Administrator associated with the notification or consultation of specified individuals or groups of individuals as required elsewhere by statute.”.

SEC. 13. INTERAGENCY GUIDANCE ON COMPLIANCE.

The Federal entities for lending regulation (as such term is defined in section 3(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4003(a))), in consultation with the Administrator of the Federal Emergency Management Agency, shall update and reissue the document entitled “Interagency Questions and Answers Regarding Flood Insurance” not later than the expiration of the 12-month period beginning on the date of the enactment of this Act and not less frequently than biennially thereafter.

SEC. 14. GAO STUDY OF CLAIMS ADJUSTMENT PRACTICES.

The Comptroller General of the United States shall conduct a study of the policies and practices for adjustment of claims for losses under flood insurance coverage made available under the National Flood Insurance Act, which shall include—

- (1) a comparison of such policies and practices with the policies and practices for adjustment of claims for losses under other insurance coverage;
- (2) an assessment of the quality of the adjustments conducted and the effects of such policies and practices on such quality;
- (3) identification of any incentives under such policies and practices that affect the speed with which such adjustments are conducted; and
- (4) identification of the affects of such policies and practices on insureds submitting such claims for losses.

Not later than the expiration of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General 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 regarding the findings and conclusions of the study conducted pursuant to this section.

SEC. 15. GAO STUDY OF FLOOD INSURANCE COVERAGE TREATMENT OF EARTH MOVEMENT.

The Comptroller General of the United States shall conduct a study of the treatment, under flood insurance coverage made available under the National Flood Insurance Act, of earth movement and subsidence, including earth movement and subsidence caused by flooding, which shall include—

- (1) identification and analysis of the effects of such treatment on the National Flood Insurance Program and insureds under the program;
- (2) an assessment of the availability and affordability of coverage in the private insurance market for earth movement and subsidence caused by flooding;
- (3) an assessment of the effects on the National Flood Insurance Program of covering earth movement and subsidence caused by flooding; and
- (4) a projection of the increased premiums that would be required to make coverage for earth movement losses actuarially sound and not fiscally detrimental to the continuation of the National Flood Insurance Program.

Not later than the expiration of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General 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 regarding the findings and conclusions of the study conducted pursuant to this section.

SEC. 16. DEFINITIONS.

(a) **NATIONAL FLOOD INSURANCE ACT OF 1968.**—Subsection (a) of section 1370 of the National Flood Insurance Act of 1968 (42 U.S.C. 4121(a)) is amended—

- (1) in paragraph (14), by striking “and” at the end;
- (2) in paragraph (15), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following new paragraphs:

“(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 in-

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) BIGGERT-WATERS FLOOD INSURANCE REFORM ACT OF 2012.—Subsection (a) of section 100202 of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4004(a)) is amended by striking paragraph (5) and inserting the following new paragraph:

“(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)).”.

PURPOSE AND SUMMARY

H.R. 3111, The National Flood Insurance Program Administrative Reform Act of 2019, makes numerous improvements to the administration of claims arising out of the Program, drawing on the lessons learned from Superstorm Sandy. H.R. 3111 ensures that policyholders better understand the terms of their flood insurance policies, improves the appeals and litigation process, and prohibits and penalizes fraud and fraudulent statements in the claims process, among other reforms.

BACKGROUND AND NEED FOR LEGISLATION

In late October 2012, Superstorm Sandy made landfall in the United States, resulting in more than 144,000 National Flood Insurance Program (NFIP) policyholders submitting notices of flood loss. The NFIP paid out more than \$8.4 billion in flood claims with an average paid loss of \$64,331.¹ Multiple issues with the claims handling process arose in the handling of these claims, which the H.R. 3111 seeks to address.

First, some Sandy victims were unfairly denied policy proceeds based on “pre-existing conditions” of the structure, or in some cases, “earth movement”. In response, the H.R. 3111 would create a 5-year pilot program to voluntarily inspect pre-existing structural conditions of insured and pre-insured properties and report to Congress within three years. The H.R. 3111 would also require a GAO study on flood insurance coverage treatment of earth movement.

Second, many Sandy victims dissatisfied with their claim amount filed an administrative appeal with the Federal Emergency Management Agency (FEMA) or a lawsuit in U.S. District Court but ran into issues with these appeals processes. For example, a March 2016 DHS IG report found that FEMA’s appeals process offered little opportunity for the policyholder to explain their grievances.² The report explains that FEMA would essentially either agree with the write-your-own (WYO) company³ on the denial of the claim, or return the claim to the company that originally denied it for re-evaluation. The report also found that there is little incentive for the WYO companies to minimize litigation costs because FEMA ultimately covers the cost of any litigation expenses that arise within the scope of FEMA’s relationship with the WYO. The H.R. 3111

¹Testimony of Roy Wright, Housing and Insurance Subcommittee, Committee on Financial Services, *Flood Insurance Reform: FEMA’s Perspective*. Thursday, March 9, 2017.

²Office of the Inspector General Report entitled, “FEMA Does Not Provide Adequate Oversight of Its National Flood Insurance Write Your Own Program, March 2016, available at <https://www.oig.dhs.gov/assets/Mgmt/2016/OIG0916-47-Mar16.pdf>

³WYO companies are insurance companies that contract with FEMA to administer NFIP policies.

would make a number of changes in response to these issues including: (1) Codifying an enhanced policyholder appeals process established by FEMA for individuals appealing a full or partial denial of their claim; (2) requiring the Administrator to make final determinations of claims within 120 days of filing; (3) requiring the Administrator to monitor and oversee litigation conducted by the WYOs to ensure that expenses are reasonable, appropriate, and cost-effective, and that WYOs comply with guidance and procedures related to litigation; (4) prohibiting the hiring of disbarred attorneys; and (5) requiring a GAO study on claims adjustment practices.

Third, in the aftermath of Sandy, there were multiple allegations of engineering reports that were fraudulently altered to deny certain payments without any explanation to the policyholder. One high profile instance of this is *Raimey v. Wright National Flood Insurance Company* in which the Court found that this case “exposed reprehensible gamesmanship by a professional engineering company that unjustly frustrated efforts by two homeowners to get fair consideration of their claims.”⁴ The In response, the H.R. 3111 would prohibit false or fraudulent statements in connection with the preparation, production, or submission of claims adjustment or engineering reports.

The H.R. 3111 also seeks to ensure that policyholders better understand the terms of their flood insurance policies by: (1) requiring the Administrator to create a coverage disclosure sheet for policyholders detailing the coverage offered and other terms; (2) requiring sufficient staffing for the Office of the Flood Insurance Advocate; and (3) creating 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.

Finally, the H.R. 3111 would require the updating and publication of interagency guidance to assist with lender compliance.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the Act may be cited as the “National Flood Insurance Program Administrative Reform Act of 2019”.

Sec. 2. Pilot program for properties with pre-existing conditions

This section amends section 1311 of the National Flood Insurance Act of 1968 by adding a new subsection (c), which authorizes the creation of a pilot program to inspect pre-existing structural conditions of insured and pre-insured properties and report to Congress no later than December 31, 2023 prior to the pilot sunset on December 31, 2024.

Sec. 3. Penalties for fraud and false statements

This section amends the National Flood Insurance Act of 1968 by adding a new section 1349, which prohibits false or fraudulent statements in connection with the preparation, production, or submission of claims adjustment or engineering reports and allows the Administrator to set penalties for such statements.

⁴*In re Hurricane Sandy Cases (Raimey v. Wright National Flood Insurance Co.) (E.D.N.Y. November 7, 2014).*

Sec. 4. Enhanced policyholder appeals process

This section amends the National Flood Insurance Act of 1968 by adding a new section 1350, which codifies the due process protections established after Superstorm Sandy by FEMA for individuals appealing a full or partial denial of their claim.

Sec. 5. Deadline for approval of claims

This section amends section 1312 of the National Flood Insurance Act of 1968 by adding a new subsection (d), which requires the FEMA Administrator to make an initial determination regarding the approval of a claim for payment or disapproval of the claim within 120 days of the claim being made. The Administrator may extend the deadline by an additional 30 days when extraordinary circumstances warrant more time.

Sec. 6. Litigation process oversight and reform

This section amends the National Flood Insurance Act of 1968 by adding a new section 1351, which provides the FEMA Administrator with authority and responsibility for overseeing litigation conducted by WYOs and requires that WYO litigation expenses are reasonable, appropriate, and cost effective, and provides the FEMA Administrator with the authority to deny any expenses that are contrary to those terms.

Sec. 7. Prohibition on hiring disbarred attorneys

This section amends the National Flood Insurance Act of 1968 by adding a new section 1352, which clarifies that the FEMA Administrator is prohibited from hiring any attorney who has been suspended or disbarred.

Sec. 8. Technical assistance reports

This section further amends section 1312 of the National Flood Insurance Act of 1968 by adding a new subsection (e) and also adds a new section 1312A to Act, which together require the FEMA Administrator to restrict the use of outside technical reports by WYOs and the NFIP direct servicing agent as part of NFIP claims investigations only to such reports that are final and are prepared in compliance with applicable state and federal laws on licensure and conduct.

Sec. 9. Improved disclosure requirement for standard flood insurance policies

This section amends section 100234 of the Biggert-Waters Flood Insurance Reform Act of 2012 by adding new subsections (c) and (d), which require the FEMA Administrator to create a coverage disclosure sheet for policyholders detailing the coverage offered, type of loss covered, costs associated with the policy, clear communication of full flood risk and require the disclosure to include an acknowledgment of the disclosure by the policyholder and the insurer selling the policy.

Sec. 10. Reserve Fund amounts

This section amends section 1310 of the National Flood Insurance Act of 1968 by adding a new subsection (g), which authorizes

FEMA to transfer money from the Reserve Fund for the purpose of paying future claims.

Sec. 11. Sufficient staffing for office of flood insurance advocate

This section amends section 24 of the Homeowner Flood Insurance Affordability Act of 2014 by adding a new subsection (e), which requires the FEMA Administrator to ensure the Office of the Flood Insurance Advocate has sufficient staffing within 180 days after enactment.

Sec. 12. Federal Flood Insurance Advisory Committee

This section amends section 1318 of the National Flood Insurance Act of 1968, providing a substitute text which 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. 13. Interagency guidance on compliance

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

Sec. 14. GAO study of claims adjustment practices

This section requires a GAO study assessing the policies and practices for adjustment of claims losses under the NFIP to determine whether the current system impacts the quality of the claims and adversely impacts policyholders.

Sec. 15. GAO study of flood insurance coverage treatment of earth movement

This section requires the GAO to study the treatment of "earth movement and subsidence caused by flooding" on the NFIP and policyholders.

Sec. 16. Definitions

This section adds certain definitions to the National Flood Insurance Act of 1968 and the Biggert-Waters Flood Insurance Reform Act of 2012.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, the Committee on Financial Services held a hearing to consider H.R. 3111 entitled "Preparing for the Storm: Reauthorization of the National Flood Insurance Program" on March 13, 2019. Testifying before the Committee was Maria Cox Lamm, South Carolina Department of Natural Resources, on behalf of the Association of State Flood Plain Managers; Christopher Heidrick, Heidrick & Company Insurance and Risk Management Services, LLC, on behalf of the Independent Insurance Agents and Brokers of America; Velma Smith, Senior Officer, The Pew Charitable Trusts; Mabel Guzmán, Broker, @properties, on behalf of the National Association of Realtors; Collin O'Mara, President and CEO, National Wildlife

Federation, on behalf of the SmarterSafer Coalition; Raymond J. Lehmann, Director of Finance, Insurance and Trade Policy, R Street Institute. A number of members of the House of Representatives also testified, including The Honorable Sean P. Duffy, Member of Congress; The Honorable Garret Graves, Member of Congress; The Honorable Blaine Luetkemeyer, Member of Congress; The Honorable Frank Pallone, Member of Congress; The Honorable Bill Pascrell, Member of Congress; and The Honorable Steve Scalise, Member of Congress.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 12, and ordered H.R. 3111 to be reported favorably to the House with an amendment in the nature of a substitute by a vote of 58 yeas and 0 nays, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 3111.

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes	X	
	Mr. Foster	X	
	Mrs. Beatty	X	
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas		
	Ms. Tlaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard		
	Ms. Adams	X	
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, <i>Ranking Member</i>	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer	X	
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services

Full Committee
116th Congress (1st Session)

Date: 6/12/2019

Measure: Final passage of H.R. 13111, as amended

Agreed To	Yes	No	Prsnt	Wdrn
	X			
Voice Vote	Ayes		Nays	

Record Vote	FC
	58 Ayes - 0 Noes

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 3111 are to ensure that the administration of claims under the National Flood Insurance Program are improved.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 3111 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 18, 2019.

Hon. MAXINE WATERS,
*Chairwoman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3111, the National Flood Insurance Program Administrative Reform Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 3111, National Flood Insurance Program Administrative Reform Act of 2019			
As ordered reported by the House Committee on Financial Services on June 11, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	0	16	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000			

H.R. 3111 would direct the Federal Emergency Management Agency (FEMA) to make several administrative changes to the National Flood Insurance Program (NFIP) related to determinations for paying claims, processing timelines, and other matters. The costs of administering the NFIP are covered by annual appropriations. The premiums that property owners pay for flood insurance and payments for claims are classified as direct spending.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 3111 would cost \$16 million over the 2020–2024 period, mostly to cover the costs of processing appeals of denied claims and an advisory committee on flood insurance. The costs of the legislation (detailed in Table 1) fall within budget function 450 (community and regional development).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 3111

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Estimated Authorization	0	4	3	3	3	3	16
Estimated Outlays	0	4	3	3	3	3	16

H.R. 3111 would change the process for policyholders to appeal claims that have been denied. Under current law, policyholders with a denied claim who subsequently file suit against their insurance carrier cannot appeal the denial of that claim.¹ H.R. 3111 would require policyholders to administratively appeal denied claims before filing suit against their carrier or FEMA, and would pause the one-year statute of limitations on filing suit while FEMA considers an administrative appeal. The bill also would require FEMA to issue a decision within 120 days of the policy holder filing an appeal. Consequently, CBO expects that the number of appeals filed would increase significantly and that FEMA’s appeals branch

¹ Under the NFIP, Private insurance companies issue and service most policies purchased by policyholders and receive a fee from the FEMA for administering those services. The NFIP covers the actuarial risk of paying claims.

would require additional resources to process that higher number of appeals in a timely manner. Using information from FEMA about the number of appeals filed under current law, CBO estimates that the cost to handle the increased number of appeals would be \$2 million a year over the 2020–2024 period. Those costs would be for an additional nine employees and for contract support.

H.R. 3111 also would establish a flood insurance advisory committee, to include members from the federal government and the private sector. The committee would be responsible for reviewing and making recommendations on several different aspects of the NFIP. Using information from FEMA about the costs of operating a similar committee, CBO estimates that implementing this provision would cost about \$1 million per year over the 2020–2024 period for staff, consultants, travel, and other expenses.

The bill would direct the Government Accountability Office to complete two studies on the NFIP. Based on the cost of similar studies, CBO estimates that those studies would cost \$1 million in 2020.

Finally, H.R. 3111 would authorize FEMA to create a pilot program through the end of 2024 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 and to provide that information to the property owner and FEMA.

FEMA would impose a surcharge on each policy to account for any administrative costs faced by the WYO companies to complete those inspections. Thus, the net effect on direct spending would be negligible because any additional costs associated with completing those inspections would be offset by additional NFIP collections.

The CBO staff contact for this estimate is Jon Sperl. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3111. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 3111, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104-1, H.R. 3111, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3111 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 3111 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.

CHANGES TO EXISTING LAW

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, H.R. 3111, as reported, are shown as follows:

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

* * * * *

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, 2023, 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, 2024.*

(5) *FINAL REPORT.*—*Not later than March 31, 2025, 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, an initial 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 120-day period (as such period may be extended pursuant to paragraph (2)) beginning upon the day on which the policyholder submits a signed proof of loss detailing the damage and amount of the loss. Payment of approved claims shall be made as soon as possible after such approval.

(2) **EXTENSION OF DEADLINE.**—The Administrator shall—

(A) provide that the period referred to in paragraph (1) may be extended by additional successive periods of 30 days in cases where extraordinary circumstances are demonstrated; and

(B) establish, by regulation, criteria for demonstrating such extraordinary circumstances.

(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.

* * * * *

[ADVISORY COMMITTEE

[SEC. 1318. (a) The Administrator shall appoint a flood insurance advisory committee without regard to the provisions of title 5, United States Code, governing appointments in the competitive

service, and such committee shall advise the Administrator in the preparation of any regulations prescribed in accordance with this title and with respect to policy matters arising in the administration of this title, and shall perform such other responsibilities as the Administrator may, from time to time, assign to such committee.

[(b) Such committee shall consist of not more than fifteen persons and such persons shall be selected from among representatives of—

- [(1) the insurance industry,
- [(2) State and local governments,
- [(3) lending institutions,
- [(4) the homebuilding industry, and
- [(5) the general public.

[(c) Members of the committee shall, while attending conferences or meetings thereof, be entitled to receive compensation at a rate fixed by the Administrator but not exceeding \$100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.]

SEC. 1318. FEDERAL FLOOD INSURANCE ADVISORY COMMITTEE.

(a) *ESTABLISHMENT.*—*There is established an advisory committee to be known as the Federal Flood Insurance Advisory Committee (in this section referred to as the “Committee”).*

(b) *MEMBERSHIP.*—

(1) *MEMBERS.*—*The Committee shall consist of—*

(A) *the Administrator of the Federal Emergency Management Agency (in this section referred to as the “Administrator”), or the designee thereof; and*

(B) *additional members appointed by the Administrator or the designee of the Administrator, who shall include—*

(i) *three representatives of Write Your Own companies;*

(ii) *one individual who served in the past, or is currently serving, as an insurance regulator of a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, or any federally-recognized Indian tribe;*

(iii) *one representative of the financial or insurance sectors who is involved in risk transfers, including re-insurance, resilience bonds, and other insurance-linked securities;*

(iv) *one actuary with demonstrated high-level knowledge of catastrophic risk insurance;*

(v) *two insurance agents or brokers with demonstrated experience with the sale of flood insurance under the National Flood Insurance Program, one of whom shall have demonstrated expertise in the challenges in insuring low-income communities;*

(vi) *one insurance claims specialist;*

(vii) one representative of a recognized consumer advocacy organization; and

(viii) one representative from an academic institution who has demonstrated expertise in insurance.

(2) **QUALIFICATIONS.**—In appointing members under paragraph (1)(C), the Administrator shall, to the maximum extent practicable, ensure the membership of the Committee has a balance of members reflecting geographic diversity, including representation from areas inland or with coastline identified by the Administrator as at high risk for flooding or as areas having special flood hazards.

(c) **DUTIES.**—The Administrator shall submit, and the Committee shall review and make recommendations on, matters related to the insurance aspects of the National Flood Insurance Program, including ratemaking, technology to administer insurance, risk assessment, actuarial practices, claims practices, sales and insurance delivery, compensation and allowances, the public-private partnership under the Write Your Own arrangement, general best insurance practices, and any significant changes proposed to be made regarding the operation of the National Flood Insurance Program.

(d) **CHAIRPERSON.**—The members of the Committee shall elect one member to serve as the chairperson of the Committee (in this section referred to as the “Chairperson”).

(e) **COMPENSATION.**—Members of the Committee shall receive no additional compensation by reason of their service on the Committee. Members may be reimbursed by the Federal Government for travel expenses, including per diem in lieu of subsistence, at rates consistent with rates authorized for employees of Federal agencies under subchapter 1 of chapter 57 of title 5, United States Code, while away from home or regular places of business in performance of service for the Committee.

(f) **MEETINGS AND ACTIONS.**—

(1) **IN GENERAL.**—The Committee shall meet not less frequently than twice each year at the request of the Chairperson or a majority of its members, and may take action by a vote of the majority of the members in accordance with the Committee’s charter.

(2) **INITIAL MEETING.**—The Administrator, or a person designated by the Administrator, shall request and coordinate the initial meeting of the Committee.

(g) **TRANSPARENCY; FACA.**—To the greatest extent possible, the Committee shall operate in a transparent manner that adheres to the requirements of the Federal Advisory Committee Act, with the exception that the Committee shall be permitted to freely communicate both during and between meetings under paragraph (f) in a confidential manner to discuss non-public information regarding the operations of the National Flood Insurance Program and other sensitive and non-public issues. If such communication occurs, the Committee shall, to the greatest extent possible, report a summary of such discussions in an appropriate public manner.

(h) **STAFF OF FEMA.**—Upon the request of the Chairperson, the Administrator may detail, on a nonreimbursable basis, personnel of the Federal Emergency Management Agency to assist the Committee in carrying out its duties.

(i) *POWERS.*—In carrying out this section, the Committee may hold hearings, receive evidence and assistance, provide information, and conduct research, as it considers appropriate.

(j) *REPORTS TO CONGRESS.*—The Administrator, on an annual basis, shall report to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Office of Management and Budget on—

- (1) *the recommendations made by the Committee;*
- (2) *actions taken by the Federal Emergency Management Agency to address such recommendations to improve the insurance aspects of the national flood insurance program; and*
- (3) *any recommendations made by the Committee that have been deferred or not acted upon, together with an explanatory statement.*

(k) *RULE OF CONSTRUCTION.*—This section shall not be construed to eliminate or alter any requirement on the Administrator associated with the notification or consultation of specified individuals or groups of individuals as required elsewhere by statute.

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CHAPTER II—ORGANIZATION AND ADMINISTRATION OF THE FLOOD INSURANCE PROGRAM

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PART B—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE

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ADJUSTMENT AND PAYMENT OF CLAIMS AND JUDICIAL REVIEW

SEC. 1341. In the event the program is carried out as provided in section 1340, the Administrator shall be authorized to adjust and make payment of any claims for proved and approved losses covered by flood insurance, and upon the disallowance by the Administrator of any such claims, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance by the Administrator, may institute an action against the Administrator on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated, and original exclusive jurisdiction is hereby conferred upon such court to hear and determine such action without regard to the amount in controversy. For purposes of this section, the time from which the Administrator has acknowledged receipt of a request by the policyholder to pursue an appeal of the initial determination regarding approval, disapproval, or amount of payment by the Administrator until the Administrator mails a final determination of such appeal shall not be considered towards the one year statute of limitation under this Act. However, this section shall not be construed as creating any action or remedy not otherwise provided by this title.

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PART C—PROVISIONS OF GENERAL APPLICABILITY

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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, fictitious, or fraudulent 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 that results in a wrongful denial or substantial payment error of flood insurance coverage; and

(3) knowingly submitting a materially false, fictitious, or fraudulent claim that results in wrongful payment of flood insurance coverage.

(b) *DEFINITION.*—For purposes of this section, the term “knowingly” means having actual awareness of the prohibitions under this part and acting deliberately in violation of such prohibitions.

(c) *ADMINISTRATIVE REMEDY.*—Prior to any legal action being taken related to this section, all administrative remedies shall be exhausted.

(d) *RULE OF CONSTRUCTION.*—This section shall not be construed—

(1) to prevent the Federal Government from bringing action against a company or individual under applicable statutes, including the False Claims Act; and

(2) as creating any action, private right of action, or remedy not otherwise provided by this title or under Federal law.

(e) *STATE ACTION.*—Any person found to have violated subsection (a) shall be referred to the appropriate and relevant State licensing agency by the Attorney General.

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 decisions, with respect to the disallowance, in whole or in part, of any claims for losses covered by flood insurance. Such appeals shall be limited to the claim or portion of the claim disallowed.

(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, modify, or overturn the decision. The Administrator may direct the Write Your Own company to take action necessary to resolve the appeal, to include re-inspection, re-adjustment, or payment, as appropriate.

(c) *DEADLINE FOR APPEALS DECISION.*— The Administrator shall issue an appeals decision pursuant to subsection (b) not later than the expiration of the 120-day period beginning upon the day

on which the Administrator acknowledges receipt of a request by the policyholder to pursue an appeal of the initial determination regarding approval, disapproval, or amount of payment by the Administrator. In cases where extraordinary circumstances, as established by regulation, are demonstrated, the 120-day period may be extended by additional successive periods of 30 days.

(d) **ADMINISTRATIVE REMEDY.**—A policyholder shall exhaust all administrative remedies, including submission of disputed claims to appeal under subsection (a), prior to commencing legal action on a disputed claim.

(e) **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.

(f) **POLICYHOLDER LITIGATION.**—This section shall not be construed to prevent a policyholder from bringing legal action against the Federal Emergency Management Agency or a Write Your Own company following the exhaustion of all administrative remedies and pursuant to applicable statute.

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) **JOINT DEFENSE.**—

(1) **AUTHORITY.**—The Administrator and the Write Your Own companies may enter into, and operate under, a joint defense agreement for any claim or lawsuit, or multiple claims or lawsuits, arising under a contract of flood insurance.

(2) **FREE FLOW OF INFORMATION.**—Under such joint defense agreement, there may be the free flow of information between the Write Your Own companies, the Administrator, the United States Department of Justice, and legal counsel for the Write Your Own companies for the purpose of litigation coordination and to allow the Administrator to perform oversight responsibility of such litigation.

(3) **ARRANGEMENT.**— Such joint defense agreement may be included in the Arrangement between the Administrator and the Write Your Own companies.

(4) **REGULATIONS.**—The Administrator may issue rules or regulations or provide such formal guidance as the Administrator considers necessary and appropriate in order to further

such joint defense agreement with the Write Your Own companies.

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 pursuant 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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**BUNNING-BEREUTER-BLUMENAUER FLOOD
INSURANCE REFORM ACT OF 2004**

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**TITLE II—MISCELLANEOUS
PROVISIONS**

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[SEC. 202. SUPPLEMENTAL FORMS.

[(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Director shall develop supplemental forms to be issued in conjunction with the issuance of a flood insurance policy that set forth, in simple terms—

- [(1)** the exact coverages being purchased by a policyholder;
- [(2)** any exclusions from coverage that apply to the coverages purchased;
- [(3)** an explanation, including illustrations, of how lost items and damages will be valued under the policy at the time of loss;
- [(4)** the number and dollar value of claims filed under a flood insurance policy over the life of the property, and the effect, under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), of the filing of any further claims under a flood insurance policy with respect to that property; and

[(5) any other information that the Director determines will be helpful to policyholders in understanding flood insurance coverage.

[(b) DISTRIBUTION.—The forms developed under subsection (a) shall be given to—

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

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

[SEC. 203. ACKNOWLEDGEMENT FORM.

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

[(1) an acknowledgement that the purchaser has received a copy of the standard flood insurance policy, and any forms developed under section 202; and

[(2) an acknowledgement that the purchaser has been told that the contents of a property or dwelling are not covered under the terms of the standard flood insurance policy, and that the policyholder has the option to purchase additional coverage for such contents.

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

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[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) the use of cost of compliance coverage under section 1304(b) of the National Flood Insurance Act of 1968 (42 U.S.C. 4011(b)) in connection with flood insurance policies;

[(2) any employee or contractor of the Federal Emergency Management Agency.]

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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 meaning 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 standard disclosure sheet that is produced by the Administrator 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 acknowledging that a standard flood insurance policy does not cover basement improvements, such as finished walls, floors, and ceilings, or personal property kept in a basement;

(D) a statement acknowledging a standard flood insurance policy does not include coverage for personal property, but such coverage may be purchased, for some personal property contained in a basement, as well as personal belongings contained elsewhere in the dwelling;

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

(F) a statement that the disclosure sheet provides general information about the policyholder's standard flood insurance policy;

(G) a statement that the standard flood insurance policy, together with the 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;

(H) a statement that, if the policyholder has any questions regarding information in the disclosure sheet or policy, the policyholder 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; and

(I) any other information that the Administrator determines will be helpful to policyholder in understanding flood insurance coverage.

(2) **ACKNOWLEDGMENT SHEET.**—Each policy application under the National Flood Insurance Program shall include an acknowledgment sheet on which the policyholder shall affirmatively—

(A) acknowledge that the policyholder received the disclosure sheet required under paragraph (1);

(B) accept or decline coverage for personal property;

(C) accept or decline other optional coverage that may be available;

(D) acknowledge the policyholder's understanding that the standard flood insurance policy, together with the 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 acknowledgment sheet and the information in the policy; and

(E) acknowledge that the policyholder has been provided and has reviewed a summary, which may be the policy declarations page, of the total cost, amount and extent of insurance coverage provided under the policy.

(d) **RULE OF CONSTRUCTION.**—This section shall not be construed to void or alter the coverage terms of the underlying standard flood insurance policy and the corresponding endorsements. In the event that the customer does not affirmatively acknowledge the requirements under subsection (c)(2), a Write Your Own company

may still issue the policy on behalf of the National Flood Insurance Program under such terms.

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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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