

115TH CONGRESS
1ST SESSION

H. R. 1423

To reauthorize and improve the national flood insurance program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2017

Ms. VELÁZQUEZ introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To reauthorize and improve the national flood insurance program, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Flood Insurance Program Reauthorization and
6 Improvement Act of 2017”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Extension of national flood insurance program.
- Sec. 3. Improved disclosure requirement for standard flood insurance policies.
- Sec. 4. Properties with preexisting conditions.

- Sec. 5. Improvement of administrative and litigation process for claims adjudication.
- Sec. 6. Improvement of oversight of engineers.
- Sec. 7. Publicly searchable online registry.
- Sec. 8. Penalties for fraud and false statements in the National Flood Insurance Program.
- Sec. 9. Whistleblower protection for employees.
- Sec. 10. Engineering firm independence.
- Sec. 11. GAO reports.
- Sec. 12. Regulations.

1 **SEC. 2. EXTENSION OF NATIONAL FLOOD INSURANCE PRO-**
 2 **GRAM.**

3 (a) FINANCING.—Section 1309(a) of the National
 4 Flood Insurance Act of 1968 (42 U.S.C. 4016(a)) is
 5 amended by striking “September 30, 2017” and inserting
 6 “September 30, 2027”.

7 (b) PROGRAM EXPIRATION.—Section 1319 of the Na-
 8 tional Flood Insurance Act of 1968 (42 U.S.C. 4026) is
 9 amended by striking “September 30, 2017” and inserting
 10 “September 30, 2027”.

11 **SEC. 3. IMPROVED DISCLOSURE REQUIREMENT FOR**
 12 **STANDARD FLOOD INSURANCE POLICIES.**

13 Section 100234 of the Biggert-Waters Flood Insur-
 14 ance Reform Act of 2012 (42 U.S.C. 4013a) is amended
 15 by adding at the end the following new subsections:

16 “(c) DISCLOSURE OF COVERAGE.—

17 “(1) DISCLOSURE SHEET.—Each policy under
 18 the National Flood Insurance Program shall include
 19 a disclosure sheet that sets forth, in plain lan-
 20 guage—

1 “(A) the definition of the term ‘flood’ for
2 purposes of coverage under the policy;

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

9 “(C) a statement of the types and charac-
10 teristics of losses that are not covered under the
11 policy;

12 “(D) a summary of total cost and amount
13 of insurance coverage;

14 “(E) a statement that the disclosure sheet
15 provides general information about the policy-
16 holder’s standard flood insurance policy;

17 “(F) a statement that the standard flood
18 insurance policy, together with the application,
19 endorsements, and declarations page, make up
20 the official contract and are controlling in the
21 event that there is any difference between the
22 information on the disclosure sheet and the in-
23 formation in the policy; and

24 “(G) a statement that if the policyholder
25 has any questions regarding information in the

1 disclosure sheet or policy he or she should con-
2 tact their insurance agent, together with the ad-
3 dress and phone number at which to contact
4 such agent.

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

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

12 “(B) a statement of whether or not the
13 policy provides coverage for the contents of the
14 property covered by the policy;

15 “(C) a statement that the standard flood
16 insurance policy, together with the application,
17 endorsements, and declarations page, make up
18 the official contract and are controlling in the
19 event that there is any difference between the
20 information on the acknowledgment sheet and
21 the information in the policy; and

22 “(D) a statement that if the policyholder
23 has any questions regarding information in the
24 acknowledgment sheet or policy he or she
25 should contact their insurance agent, together

1 with the address and phone number at which to
2 contact such agent.

3 “(3) REQUIRED SIGNATURES.—A policy for
4 flood insurance coverage under the National Flood
5 Insurance Program may not take effect unless the
6 disclosure sheet required under paragraph (1) and
7 the acknowledgment sheet required under paragraph
8 (2), with respect to the policy, are signed and dated
9 by the policyholder, the insurance agent who sold the
10 policy, and a representative of the Administrator.

11 “(d) AVAILABILITY IN OTHER LANGUAGES.—

12 “(1) AVAILABILITY.—The Administrator shall
13 make policies under the National Flood Insurance
14 Program, and the disclosure and acknowledgment
15 sheets required by subsection (c), available in Span-
16 ish language versions and in such other languages as
17 the Administrator considers appropriate and shall
18 provide such a version at the request of the insured
19 or prospective insured.

20 “(2) PUBLICIZING AVAILABILITY.—The Admin-
21 istrator shall take such actions as may be necessary
22 to inform insureds and prospective insureds of the
23 availability of policies in such languages other than
24 English.

1 “(3) CONFLICTING INFORMATION.—In the case
 2 of any difference between the information that is
 3 provided pursuant to this subsection to a policy-
 4 holder in the English language and in the Spanish
 5 or other language, the information provided in the
 6 English language shall be determinative.”.

7 **SEC. 4. PROPERTIES WITH PREEXISTING CONDITIONS.**

8 Section 1311 of the National Flood Insurance Act of
 9 1968 (42 U.S.C. 4018) is amended by adding at the end
 10 the following new subsection:

11 “(c) PROGRAM FOR INVESTIGATION OF PREEXISTING
 12 STRUCTURAL CONDITIONS.—

13 “(1) VOLUNTARY PROGRAM.—The Adminis-
 14 trator shall carry out a program to provide for com-
 15 panies participating in the Write Your Own program
 16 (as such term is defined in section 100202 of the
 17 Biggert-Waters Flood Insurance Reform Act of
 18 2012 (42 U.S.C. 4004)) to investigate preexisting
 19 structural conditions of insured properties and po-
 20 tentially insured properties that could result in the
 21 denial of a claim under a policy for flood insurance
 22 coverage under this title in the event of a flood loss
 23 to such property. Participation in the program shall
 24 be voluntary on the part of Write Your Own compa-
 25 nies.

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

4 “(A) provide in policies for flood insurance
5 coverage under this title covered by the pro-
6 gram that, upon the request of the policyholder,
7 the company shall provide for—

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

14 “(ii) if such investigation is not deter-
15 minative, an on-site inspection of the prop-
16 erty to determine whether such preexisting
17 structural conditions are present;

18 “(B) upon completion of an investigation
19 or inspection pursuant to subparagraph (A)
20 that determines that such a preexisting struc-
21 tural condition is present or absent, submit a
22 report to the policyholder and Administrator de-
23 scribing the condition; and

24 “(C) impose a surcharge on each policy de-
25 scribed in subparagraph (A) in such amount

1 that the Administrator determines is appro-
 2 priate to cover the costs of investigations and
 3 inspections performed pursuant to such policies
 4 and reimburse Write Your Own companies par-
 5 ticipating in the program under this subsection
 6 for such costs.”.

7 **SEC. 5. IMPROVEMENT OF ADMINISTRATIVE AND LITIGA-**
 8 **TION PROCESS FOR CLAIMS ADJUDICATION.**

9 (a) INDUSTRY PROGRAM WITH FEDERAL FINANCIAL
 10 ASSISTANCE.—Section 1333 of the National Flood Insur-
 11 ance Act of 1968 (42 U.S.C. 4053) is amended—

12 (1) by striking “mailing of notice of disallow-
 13 ance or partial disallowance by the Administrator”
 14 and inserting “the final determination by the Ad-
 15 ministrator disallowing or partially disallowing the
 16 claim”; and

17 (2) by adding after the period at the end the
 18 following: “If the claimant prevails in an action
 19 under this section, the court may award costs of liti-
 20 gation, including attorneys fee, litigation expenses,
 21 and engineering and other expert expenses, to the
 22 claimant. Any such award shall be paid by the Ad-
 23 ministrator and, upon such payment, the Adminis-
 24 trator shall be subrogated to the rights of the claim-
 25 ant to recover such costs for which the Adminis-

1 trator has compensated the claimant from any com-
2 pany or other insurer responsible for the disallow-
3 ance of the claim.”.

4 (b) GOVERNMENT PROGRAM WITH INDUSTRY AS-
5 SISTANCE.—Section 1341 of the National Flood Insurance
6 Act of 1968 (42 U.S.C. 4072) is amended—

7 (1) by striking “mailing of notice of disallow-
8 ance or partial disallowance of” and inserting “the
9 final determination disallowing or partially dis-
10 allowing”; and

11 (2) by adding after the period at the end the
12 following: “If the claimant prevails in an action
13 under this section, the court may award costs of liti-
14 gation, including attorneys fee, litigation expenses,
15 and engineering and other expert expenses, to the
16 claimant. Any such award shall be paid by the Ad-
17 ministrator and, upon such payment, the Adminis-
18 trator shall be subrogated to the rights of the claim-
19 ant to recover such costs for which the Adminis-
20 trator has compensated the claimant from any insur-
21 ance company or other insurer or insurance adjust-
22 ment organization that may be responsible for the
23 disallowance of the claim.”.

24 (c) AWARDS FOR COSTS IN APPEALS TO FEMA.—
25 Section 1312 of the National Flood Insurance Act of 1968

1 (42 U.S.C. 4019) is amended by adding at the end the
2 following new subsection:

3 “(d) AWARDS FOR COSTS IN ADMINISTRATIVE PRO-
4 CEEDINGS.—If the claimant prevails in any appeal to the
5 Administrator of the disallowance of a claim for losses cov-
6 ered by flood insurance made available under this title,
7 the Administrator shall award costs of the appeal, includ-
8 ing attorneys fee, any proceeding expenses, and engineer-
9 ing and other expert expenses, to the claimant.”.

10 (d) USE OF PRIVATE COUNSEL.—Section 1347 of the
11 National Flood Insurance Act of 1968 (42 U.S.C. 4083)
12 is amended by adding at the end the following new sub-
13 section:

14 “(c) USE OF PRIVATE COUNSEL.—

15 “(1) FEE SCHEDULE.—The Administrator shall
16 establish a fee schedule for payment of private coun-
17 sel used to represent the Administrator in controver-
18 sies, actions, and proceedings in connection with the
19 National Flood Insurance Program under this title.

20 “(2) REQUIREMENT FOR
21 PREAUTHORIZATION.—The Administrator shall re-
22 quire any private counsel obtained in connection
23 with any controversy, action, or proceeding in con-
24 nection with the National Flood Insurance Program
25 under this title to obtain authorization from the Ad-

1 administrator before taking any major action associ-
2 ated with such controversy, action, or proceeding,
3 which shall include settlement, hiring experts, and
4 such other actions as the Administrator shall speci-
5 fy.”.

6 **SEC. 6. IMPROVEMENT OF OVERSIGHT OF ENGINEERS.**

7 (a) IN GENERAL.—Part C of chapter 2 of the Na-
8 tional Flood Insurance Act of 1968 (42 U.S.C. 4081 et
9 seq.) is amended by adding at the end the following new
10 section:

11 **“SEC. 1349. OVERSIGHT OF ENGINEERS.**

12 “(a) QUALIFICATIONS.—The Administrator shall re-
13 quire that any individual that provides engineering serv-
14 ices in connection with flood insurance coverage provided
15 under this title, including inspections under section
16 1306(e) and services in connection with assessing any
17 claim for losses covered by a policy for such coverage,
18 shall—

19 “(1) have registered with the Administrator and
20 certified to the Administrator that the engineer is
21 professionally licensed to practice as an engineer;

22 “(2) have expertise in a particular discipline of
23 engineering or act within the area of their com-
24 petency, as the Administrator shall require; and

1 “(3) be certified by the Administrator pursuant
2 to subsection (b).

3 “(b) CERTIFICATION BY FEMA.—

4 “(1) REQUIREMENT.—The Administrator shall
5 carry out a program under this subsection to certify
6 engineers as qualified to provide engineering services
7 in connection with flood insurance coverage provided
8 under this title.

9 “(2) CONTENTS.—The program under this sub-
10 section shall—

11 “(A) include an initial training seminar;

12 “(B) provide such standards and testing
13 requirements as the Administrator shall estab-
14 lish; and

15 “(C) require an annual renewal of certifi-
16 cation through continuing education.

17 “(c) FEES.—

18 “(1) SCHEDULE; COLLECTION.—The Adminis-
19 trator shall establish and collect fees using a stand-
20 ardized fee schedule for all engineering services pro-
21 vided in connection with flood insurance coverage
22 provided under this title, which schedule shall be
23 similar to the fee schedule of the Administrator used
24 for companies adjusting claims under such coverage.

1 “(2) DEPOSIT.—Any fees collected under para-
2 graph (1) section shall be deposited into the Na-
3 tional Flood Insurance Fund pursuant to section
4 1310(b)(6).

5 “(d) IDENTIFICATION NUMBERS.—The Adminis-
6 trator shall establish a system to provide a unique numer-
7 ical identifier for each engineer that provides engineering
8 services in connection with flood insurance coverage pro-
9 vided under this title to assist in tracking past perform-
10 ance in the provision of such services.

11 “(e) SUBMISSION OF DOCUMENTATION.—In the case
12 of any insurance company participating in the Write Your
13 Own program (as such term is defined in section 100202
14 of the Biggert-Waters Flood Insurance Reform Act of
15 2012 (42 U.S.C. 4004)):

16 “(1) TO WRITE YOUR OWN INSURERS.—The
17 Administrator shall—

18 “(A) require all such participating insur-
19 ance companies to obtain from providers of en-
20 gineering services provided in connection with
21 flood insurance coverage provided under this
22 title, including any sub-contractors,

23 “(i) documentation sufficient to
24 itemize and disaggregate the costs and fees

1 for such services, including the costs and
2 fees for any subcontractors; and

3 “(ii) all photos, notes, draft reports,
4 and other documentation relating to pro-
5 viding such services in connection with a
6 claim under such coverage;

7 “(B) make available to such participating
8 insurance companies the fee schedule estab-
9 lished under subsection (c) and such other in-
10 formation as may be necessary to enable such
11 participating insurance companies to determine
12 whether the costs and fees charged by providers
13 of engineering services are reasonable in rela-
14 tion to the services provided.

15 “(2) TO FEMA.—The Administrator shall re-
16 quire each such insurance company to submit to the
17 Administrator, before any reimbursement or other
18 allowance, payment, or compensation is provided
19 under the Write Your Own program in connection
20 with engineering services provided, all supporting
21 documentation relating to such engineering serv-
22 ices.”.

23 (b) USE OF FEES.—Subsection (a) of section 1310
24 of the National Flood Insurance Act of 1968 (42 U.S.C.
25 4017(a)) is amended—

1 (1) by redesignating paragraphs (7) and (8) as
2 paragraphs (9) and (10), respectively; and

3 (2) by inserting after paragraph (6) the fol-
4 lowing new paragraph:

5 “(7) to the extent that fees are deposited in the
6 Fund pursuant to section 1349(c)(2), for costs asso-
7 ciated with carrying out systems for certification and
8 identification under subsections (b) and (d), respec-
9 tively, of section 1349;”.

10 **SEC. 7. PUBLICLY SEARCHABLE ONLINE REGISTRY.**

11 Part C of chapter 2 of the National Flood Insurance
12 Act of 1968 (42 U.S.C. 4081 et seq.), as amended by the
13 preceding provisions of this Act, is further amended by
14 adding at the end the following new section:

15 **“SEC. 1350. PUBLICLY SEARCHABLE ONLINE REGISTRY.**

16 “(a) ESTABLISHMENT AND MAINTENANCE.—The
17 Administrator shall provide for the establishment and
18 maintenance of a national registry, organized by State of
19 residence, of all companies and individuals providing serv-
20 ices relating to the selling, writing, or servicing of flood
21 insurance made available under this title or relating to the
22 adjusting of claims under such flood insurance, which
23 shall include all insurance companies participating in the
24 Write Your Own program (as such term is defined in sec-
25 tion 100202 of the Biggert-Waters Flood Insurance Re-

1 form Act of 2012 (42 U.S.C. 4004)) and all individuals
2 participating in the direct servicing program, including—

3 “(1) all individuals selling and writing policies
4 for flood insurance coverage under this title;

5 “(2) all companies and individuals providing ad-
6 justing services in connection with such flood insur-
7 ance;

8 “(3) all companies and individuals providing en-
9 gineering services in connection with such flood in-
10 surance, identification of engineers using the unique
11 numerical identifier assigned pursuant to section
12 1349(d), and information regarding past perform-
13 ance in providing such services, including identifica-
14 tion of cases worked on, cases that involved litiga-
15 tion, and any association of the engineer with any
16 company convicted of fraud;

17 “(4) information identifying all penalties, fines,
18 and criminal convictions of all such companies and
19 individuals relating to the operation of the national
20 flood insurance program; and

21 “(5) information identifying any conviction or
22 penalty assessed for fraud pertaining to any such
23 company or individual.

24 “(b) PUBLIC AVAILABILITY.—The Administrator
25 shall ensure that the registry required to be established

1 and maintained under this section is publicly available on-
 2 line in a manner that provides the capacity to search the
 3 registry by the name of the company or individual.

4 “(c) ANNUAL REVIEW.—The Comptroller General of
 5 the United States shall conduct a review of the registry
 6 established and maintained under this section on a bien-
 7 nial basis to ensure its accuracy and currency.

8 “(d) ADMINISTRATION.—

9 “(1) NONPROFIT ORGANIZATION.—The Admin-
 10 istrator shall enter into a contract with an appro-
 11 priate nonprofit organization to establish and main-
 12 tain the registry under this section.

13 “(2) AUTHORIZATION OF APPROPRIATIONS.—
 14 There is authorized to be appropriated for payments
 15 under the contract under paragraph (1) such sums
 16 as may be necessary for establishment and mainte-
 17 nance of the national registry under this section.”.

18 **SEC. 8. PENALTIES FOR FRAUD AND FALSE STATEMENTS**
 19 **IN THE NATIONAL FLOOD INSURANCE PRO-**
 20 **GRAM.**

21 Part C of chapter 2 of the National Flood Insurance
 22 Act of 1968 (42 U.S.C. 4081 et seq.), as amended by the
 23 preceding provisions of this Act, is further amended by
 24 adding at the end the following new section:

1 **“SEC. 1351. PENALTIES FOR FRAUD AND FALSE STATE-**
2 **MENTS IN THE NATIONAL FLOOD INSURANCE**
3 **PROGRAM.**

4 “(a) OFFENSE.—It shall be unlawful, in the prepara-
5 tion, production, or submission of any report in connection
6 with the proving or adjusting of a claim for flood insur-
7 ance coverage made available under this title, including
8 any engineering report or claims adjustment report, to
9 knowingly engage in the practice of engineering without
10 a license, to knowingly forge any such report, or to know-
11 ingly make any materially false, fictitious, or fraudulent
12 statement or representation in such a report.

13 “(b) PENALTIES.—Whoever violates subsection (a)
14 shall be subject to any one or more of the following pen-
15 alties:

16 “(1) CRIMINAL.—In the case of a person who
17 is an individual, imprisonment for not more than 18
18 months.

19 “(2) CIVIL.—Such civil penalties as the Admin-
20 istrator, the Secretary of Homeland Security, and
21 the Attorney General shall, by regulation, establish,
22 which may include civil monetary penalties and
23 fines, suspension and debarment from participation
24 in the National Flood Insurance Program, and such
25 other civil sanctions as such officials consider appro-
26 priate. In the case of any fine or monetary penalty

1 collected pursuant to this paragraph, such amounts
 2 collected shall be paid to the owner of the property
 3 for which the claim involved was made.

4 “(c) EXEMPTION.—The offense under subsection (a)
 5 is exempted from the applicability of the fine provided
 6 under section 3571 of title 18, United States Code.”.

7 **SEC. 9. WHISTLEBLOWER PROTECTION FOR EMPLOYEES.**

8 (a) IN GENERAL.—Part C of chapter 2 of the Na-
 9 tional Flood Insurance Act of 1968 (42 U.S.C. 4081 et
 10 seq.), as amended by the preceding provisions of this Act,
 11 is further amended by adding at the end the following new
 12 section:

13 **“SEC. 1352. WHISTLEBLOWER PROTECTION FOR EMPLOY-**
 14 **EES.**

15 “(a) IN GENERAL.—No person shall terminate or in
 16 any other way discriminate against, or cause to be termi-
 17 nated or discriminated against, any covered employee or
 18 any authorized representative of covered employees by rea-
 19 son of the fact that such employee or representative,
 20 whether at the initiative of the employee or in the ordinary
 21 course of the duties of the employee (or any person acting
 22 pursuant to a request of the employee), has—

23 “(1) provided, caused to be provided, or is
 24 about to provide or cause to be provided, informa-
 25 tion to the employer, the Agency, the Federal Bu-

1 reau of Investigation, or any other State, local, or
2 Federal, government authority or law enforcement
3 agency relating to any violation of, or any act or
4 omission that there are reasonable grounds to be-
5 lieve (whether or not the employee actually has such
6 belief) to be a violation of, any provision of any law
7 relating to the National Flood Insurance Program or
8 any rule, order, standard, or prohibition prescribed
9 by the Agency in connection with the National Flood
10 Insurance Program;

11 “(2) testified or will testify in any proceeding
12 resulting from the administration or enforcement of
13 any provision of any law relating to the National
14 Flood Insurance Program or any rule, order, stand-
15 ard, or prohibition prescribed by the Agency in con-
16 nection with the National Flood Insurance program;

17 “(3) filed, instituted, or caused to be filed or in-
18 stituted any proceeding under the National Flood
19 Insurance Program; or

20 “(4) objected to, or refused to participate in,
21 any activity, policy, practice, or assigned task that
22 the employee (or other such person) reasonably be-
23 lieved to be in violation of any law, rule, order,
24 standard, or prohibition, subject to the jurisdiction

1 of, or enforceable by, the Agency in connection with
2 the National Flood Insurance Program.

3 “(b) PROCEDURES AND TIMETABLES.—

4 “(1) COMPLAINT.—

5 “(A) IN GENERAL.—A person who believes
6 that he or she has been discharged or otherwise
7 discriminated against by any person in violation
8 of subsection (a) may, not later than 180 days
9 after the date on which such alleged violation
10 occurs, file (or have any person file on his or
11 her behalf) a complaint with the Administrator
12 alleging such discharge or discrimination and
13 identifying the person responsible for such act.

14 “(B) ACTIONS OF ADMINISTRATOR.—Upon
15 receipt of such a complaint, the Administrator
16 shall notify, in writing, the person named in the
17 complaint who is alleged to have committed the
18 violation, of—

19 “(i) the filing of the complaint;

20 “(ii) the allegations contained in the
21 complaint;

22 “(iii) the substance of evidence sup-
23 porting the complaint; and

1 “(iv) opportunities that will be af-
2 forded to such person under paragraph
3 (2).

4 “(2) INVESTIGATION BY ADMINISTRATOR.—

5 “(A) IN GENERAL.—Not later than 60
6 days after the date of receipt of a complaint
7 filed under paragraph (1), and after affording
8 the complainant and the person named in the
9 complaint who is alleged to have committed the
10 violation that is the basis for the complaint an
11 opportunity to submit to the Administrator a
12 written response to the complaint and an oppor-
13 tunity to meet with a representative of the Ad-
14 ministrator to present statements from wit-
15 nesses, the Administrator shall—

16 “(i) initiate an investigation and de-
17 termine whether there is reasonable cause
18 to believe that the complaint has merit;
19 and

20 “(ii) notify the complainant and the
21 person alleged to have committed the viola-
22 tion of subsection (a), in writing, of such
23 determination.

24 “(B) NOTICE OF RELIEF AVAILABLE.—If
25 the Administrator concludes that there is rea-

1 sonable cause to believe that a violation of sub-
2 section (a) has occurred, the Administrator
3 shall, together with the notice under subpara-
4 graph (A)(ii), issue a preliminary order pro-
5 viding the relief prescribed by paragraph
6 (4)(B).

7 “(C) REQUEST FOR HEARING.—Not later
8 than 30 days after the date of receipt of notifi-
9 cation of a determination of the Administrator
10 under this paragraph, either the person alleged
11 to have committed the violation or the com-
12 plainant may file objections to the findings or
13 preliminary order, or both, and request a hear-
14 ing on the record. The filing of such objections
15 shall not operate to stay any reinstatement
16 remedy contained in the preliminary order. Any
17 such hearing shall be conducted expeditiously,
18 and if a hearing is not requested in such 30-day
19 period, the preliminary order shall be deemed a
20 final order that is not subject to judicial review.

21 “(3) GROUNDS FOR DETERMINATION OF COM-
22 PLAINTS.—

23 “(A) IN GENERAL.—The Administrator
24 shall dismiss a complaint filed under this sub-
25 section, and shall not conduct an investigation

1 otherwise required under paragraph (2), unless
2 the complainant makes a prima facie showing
3 that any behavior described in paragraphs (1)
4 through (4) of subsection (a) was a contrib-
5 uting factor in the unfavorable personnel action
6 alleged in the complaint.

7 “(B) REBUTTAL EVIDENCE.—Notwith-
8 standing a finding by the Administrator that
9 the complainant has made the showing required
10 under subparagraph (A), no investigation other-
11 wise required under paragraph (2) shall be con-
12 ducted, if the employer demonstrates, by clear
13 and convincing evidence, that the employer
14 would have taken the same unfavorable per-
15 sonnel action in the absence of that behavior.

16 “(C) EVIDENTIARY STANDARDS.—The Ad-
17 ministrator may determine that a violation of
18 subsection (a) has occurred only if the com-
19 plainant demonstrates that any behavior de-
20 scribed in paragraphs (1) through (4) of sub-
21 section (a) was a contributing factor in the un-
22 favorable personnel action alleged in the com-
23 plaint. Relief may not be ordered under sub-
24 paragraph (A) if the employer demonstrates by
25 clear and convincing evidence that the employer

1 would have taken the same unfavorable per-
2 sonnel action in the absence of that behavior.

3 “(4) ISSUANCE OF FINAL ORDERS; REVIEW
4 PROCEDURES.—

5 “(A) TIMING.—Not later than 120 days
6 after the date of conclusion of any hearing
7 under paragraph (2), the Administrator shall
8 issue a final order providing the relief pre-
9 scribed by this paragraph or denying the com-
10 plaint. At any time before issuance of a final
11 order, a proceeding under this subsection may
12 be terminated on the basis of a settlement
13 agreement entered into by the Administrator,
14 the complainant, and the person alleged to have
15 committed the violation.

16 “(B) PENALTIES.—

17 “(i) ORDER OF ADMINISTRATOR.—If,
18 in response to a complaint filed under
19 paragraph (1), the Administrator deter-
20 mines that a violation of subsection (a) has
21 occurred, the Administrator shall order the
22 person who committed such violation—

23 “(I) to take affirmative action to
24 abate the violation;

1 “(II) to reinstate the complain-
2 ant to his or her former position, to-
3 gether with compensation, including
4 twice the amount of back pay due,
5 and restore the terms, conditions, and
6 privileges associated with his or her
7 employment; and

8 “(III) to provide compensatory
9 damages to the complainant.

10 “(ii) PENALTY.—If an order is issued
11 under clause (i), the Administrator, at the
12 request of the complainant, shall assess
13 against the person against whom the order
14 is issued, a sum equal to the aggregate
15 amount of all costs and expenses (includ-
16 ing attorney fees and expert witness fees)
17 reasonably incurred, as determined by the
18 Administrator, by the complainant for, or
19 in connection with, the bringing of the
20 complaint upon which the order was
21 issued.

22 “(C) PENALTY FOR FRIVOLOUS CLAIMS.—
23 If the Administrator finds that a complaint
24 under paragraph (1) is frivolous or has been
25 brought in bad faith, the Administrator may

1 award to the prevailing employer a reasonable
2 attorney fee, not exceeding \$1,000, to be paid
3 by the complainant.

4 “(D) DE NOVO REVIEW.—

5 “(i) FAILURE OF THE ADMINIS-
6 TRATOR TO ACT.—If the Administrator has
7 not issued a final order within 210 days
8 after the date of filing of a complaint
9 under this subsection, or within 90 days
10 after the date of receipt of a written deter-
11 mination, the complainant may bring an
12 action at law or equity for de novo review
13 in the appropriate district court of the
14 United States having jurisdiction, which
15 shall have jurisdiction over such an action
16 without regard to the amount in con-
17 troversy, and which action shall, at the re-
18 quest of either party to such action, be
19 tried by the court with a jury.

20 “(ii) PROCEDURES.—A proceeding
21 under clause (i) shall be governed by the
22 same legal burdens of proof specified in
23 paragraph (3). The court shall have juris-
24 diction to grant all relief necessary to
25 make the employee whole, including injunc-

1 tive relief and compensatory damages, in-
2 cluding—

3 “(I) reinstatement with the same
4 seniority status that the employee
5 would have had, but for the discharge
6 or discrimination;

7 “(II) compensation in the
8 amount equal to twice the amount of
9 back pay due, with interest; and

10 “(III) compensation for any spe-
11 cial damages sustained as a result of
12 the discharge or discrimination, in-
13 cluding litigation costs, expert witness
14 fees, and reasonable attorney fees.

15 “(E) OTHER APPEALS.—Unless the com-
16 plainant brings an action under subparagraph
17 (D), any person adversely affected or aggrieved
18 by a final order issued under subparagraph (A)
19 may file a petition for review of the order in the
20 United States Court of Appeals for the circuit
21 in which the violation with respect to which the
22 order was issued, allegedly occurred or the cir-
23 cuit in which the complainant resided on the
24 date of such violation, not later than 60 days
25 after the date of the issuance of the final order

1 of the Administrator under subparagraph (A).
2 Review shall conform to chapter 7 of title 5,
3 United States Code. The commencement of pro-
4 ceedings under this subparagraph shall not, un-
5 less ordered by the court, operate as a stay of
6 the order. An order of the Administrator with
7 respect to which review could have been ob-
8 tained under this subparagraph shall not be
9 subject to judicial review in any criminal or
10 other civil proceeding.

11 “(5) FAILURE TO COMPLY WITH ORDER.—

12 “(A) ACTIONS BY THE ADMINISTRATOR.—

13 If any person has failed to comply with a final
14 order issued under paragraph (4), the Adminis-
15 trator may file a civil action in the United
16 States district court for the district in which
17 the violation was found to have occurred, or in
18 the United States district court for the District
19 of Columbia, to enforce such order. In actions
20 brought under this paragraph, the district
21 courts shall have jurisdiction to grant all appro-
22 priate relief including injunctive relief and com-
23 pensatory damages.

24 “(B) CIVIL ACTIONS TO COMPEL COMPLI-
25 ANCE.—A person on whose behalf an order was

1 issued under paragraph (4) may commence a
2 civil action against the person to whom such
3 order was issued to require compliance with
4 such order. The appropriate United States dis-
5 trict court shall have jurisdiction, without re-
6 gard to the amount in controversy or the citi-
7 zenship of the parties, to enforce such order.

8 “(C) AWARD OF COSTS AUTHORIZED.—

9 The court, in issuing any final order under this
10 paragraph, may award costs of litigation (in-
11 cluding reasonable attorney and expert witness
12 fees) to any party, whenever the court deter-
13 mines such award is appropriate.

14 “(D) MANDAMUS PROCEEDINGS.—Any

15 nondiscretionary duty imposed by this section
16 shall be enforceable in a mandamus proceeding
17 brought under section 1361 of title 28, United
18 States Code.

19 “(c) UNENFORCEABILITY OF CERTAIN AGREE-

20 MENTS.—

21 “(1) NO WAIVER OF RIGHTS AND REMEDIES.—

22 Except as provided under paragraph (3), and not-
23 withstanding any other provision of law, the rights
24 and remedies provided for in this section may not be
25 waived by any agreement, policy, form, or condition

1 of employment, including by any pre-dispute arbitra-
2 tion agreement.

3 “(2) NO PRE-DISPUTE ARBITRATION AGREE-
4 MENTS.—Except as provided under paragraph (3),
5 and notwithstanding any other provision of law, no
6 pre-dispute arbitration agreement shall be valid or
7 enforceable to the extent that it requires arbitration
8 of a dispute arising under this section.

9 “(3) EXCEPTION.—Notwithstanding paragraphs
10 (1) and (2), an arbitration provision in a collective
11 bargaining agreement shall be enforceable as to dis-
12 putes arising under subsection (a)(4), unless the Ad-
13 ministrator determines, by rule, that such provision
14 is inconsistent with the purposes of this title.

15 “(d) DEFINITIONS.—For purposes of this section, the
16 following definitions shall apply:

17 “(1) ADMINISTRATOR.—The term ‘Adminis-
18 trator’ means the Administrator of the Federal
19 Emergency Management Agency.

20 “(2) AGENCY.—The term ‘Agency’ means the
21 Federal Emergency Management Agency.

22 “(3) COVERED EMPLOYEE.—The term ‘covered
23 employee’ means any individual performing tasks re-
24 lated to the National Flood Insurance Program, in-
25 cluding such employees of—

1 “(A) the Agency;

2 “(B) the Department of Homeland Secu-
3 rity;

4 “(C) an insurance company participating
5 in the Write Your Own program (as such term
6 is defined in section 100202 of the Biggert-
7 Waters Flood Insurance Reform Act of 2012
8 (42 U.S.C. 4004));

9 “(D) a third-party administrator for an in-
10 surance company described in subparagraph
11 (C);

12 “(E) an engineer, or engineering company,
13 engaged in providing engineering services in
14 connection with the National Flood Insurance
15 Program, or a sub-contractor of such an engi-
16 neer or company; and

17 “(F) a claims adjuster, or claims adjusting
18 company, engaged in providing claims adjusting
19 services in connection with the National Flood
20 Insurance Program, or a sub-contractor of such
21 an claims adjuster or company.”.

22 (b) AVAILABILITY OF FLOOD INSURANCE FUND.—
23 Subsection (a) of section 1310 of the National Flood In-
24 surance Act of 1968 (42 U.S.C. 4017(a)), as amended by

1 section 6(b) of this Act, is further amended by inserting
 2 after paragraph (7) the following new paragraph:

3 “(7) for penalties, relief, and costs under sec-
 4 tion 1352(b), to the extent ordered to be paid by the
 5 Administrator or any officer or employee of the Fed-
 6 eral Emergency Management Agency;”.

7 **SEC. 10. ENGINEERING FIRM INDEPENDENCE.**

8 Part C of chapter 2 of the National Flood Insurance
 9 Act of 1968 (42 U.S.C. 4081 et seq.), as amended by the
 10 preceding provisions of this Act, is further amended by
 11 adding at the end the following new sections:

12 **“SEC. 1353. SELECTION AND REPLACEMENT OF CLAIMS AD-
 13 JUSTING AND ENGINEERING COMPANIES.**

14 “(a) In the case of an insurance company partici-
 15 pating in the Write Your Own program (as such term is
 16 defined in section 100202 of the Biggert-Waters Flood In-
 17 surance Reform Act of 2012 (42 U.S.C. 4004)) that en-
 18 gages any adjusting company or engineering company in
 19 the adjustment of a claim for losses resulting from struc-
 20 tural damage to a property under a policy for flood insur-
 21 ance coverage made available under this title—

22 “(1) no representative of the adjusting company
 23 or engineering company may visit the property be-
 24 fore the expiration of the 30-day period beginning
 25 upon the date that the insurance company provides

1 notice to the owner of the property that such adjust-
2 ing or engineering company has been engaged, un-
3 less the owner, in writing, consents to an earlier
4 visit; and

5 “(2) if the policyholder submits to the insur-
6 ance company written notice of disapproval of the
7 adjusting or engineering company selected by such
8 insurance company before a representative of the ad-
9 justing or engineering company first visits the prop-
10 erty, such insurance company shall—

11 “(A) within 30 days after the policy-
12 holder’s notification of such disapproval—

13 “(i) submit to the Administrator no-
14 tice of the policyholders notification of
15 such disapproval; and

16 “(ii) submit to the policyholder a list
17 of not less than three other adjusting or
18 engineering companies, as the case may be,
19 that are unaffiliated with the disapproved
20 company to conduct the activities involved
21 in adjusting such claim; and

22 “(B) replace the original adjusting or engi-
23 neering company with the company from such
24 list selected by the policyholder, if the policy-
25 holder notifies the insurance company and the

1 Administrator, in writing, of the policyholder's
2 selected company within 30 days after receiving
3 the list required under subparagraph (A).

4 **“SEC. 1354. ENGINEERING FIRM INDEPENDENCE.**

5 “(a) IN GENERAL.—It shall be unlawful, in partici-
6 pating in the Write Your Own program (as such term is
7 defined in section 100202 of the Biggert-Waters Flood In-
8 surance Reform Act of 2012 (42 U.S.C. 4004)), to engage
9 in any act or practice that violates the independence of
10 an engineering company or individual engineer providing
11 engineering services in connection with flood insurance
12 coverage made available under this title.

13 “(b) VIOLATIONS.—For purposes of subsection (a),
14 acts or practices that violate the independence of an engi-
15 neering company or individual engineer shall include—

16 “(1) the preparation or submission of any engi-
17 neering report in connection with a claim for dam-
18 ages under flood insurance coverage in which a per-
19 son with an interest in the award of such damages
20 compensates, coerces, extorts, colludes, instructs, in-
21 duces, bribes, or intimidates a person, engineering
22 firm, or other entity responsible for assessing dam-
23 ages for the purpose of causing the damages as-
24 signed to be based on any factor other than the

1 independent judgment of the engineering company
2 or individual engineer;

3 “(2) mischaracterizing, or suborning any
4 mischaracterization of, the damages involved in any
5 such claim;

6 “(3) seeking to influence an engineer or other-
7 wise to encourage a targeted value of damages in
8 order to facilitate the making of a report; and

9 “(4) withholding or threatening to withhold
10 timely payment for an engineering report or for en-
11 gineering services rendered.

12 “(c) EXCEPTIONS.—The requirements of subsection
13 (b) shall not be construed as prohibiting an insurance
14 company participating in the Write Your Own program,
15 a claims adjusting company, or an engineering company
16 from asking an engineer to undertake one or more of the
17 following:

18 “(1) Consider additional information.

19 “(2) Provide further detail, substantiation, or
20 explanation for an assessment of damages.

21 “(3) Correct errors in an engineering report.

22 “(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—
23 No engineer engaged by an insurance company partici-
24 pating in the Write Your Own program to assess flood
25 damages to a property covered by flood insurance made

1 available under this title may have an ownership or finan-
 2 cial interest in—

3 “(1) such insurance company, any claims ad-
 4 justing company, or any other company, other than
 5 the company that employs such engineer, that is
 6 connected with assessing such damages; or

7 “(2) the property being assessed.

8 “(e) MANDATORY REPORTING.—An insurance com-
 9 pany participating in the Write Your Own program which
 10 knows, upon or before submitting to the Administrator a
 11 claim for damages under flood insurance coverage made
 12 available under this title, of a violation of the independ-
 13 ence standards under this section, may not submit such
 14 a claim unless the insurance company includes, together
 15 with such claim, a certification that the violation involved
 16 does not materially mistake the value of the damages and
 17 documentation to support such claim.”.

18 **SEC. 11. GAO REPORTS.**

19 (a) REPORT ON EFFECTS OF GLOBAL WARMING ON
 20 FLOOD INSURANCE PROGRAM SOLVENCY.—Not later
 21 than the expiration of the 18-month period beginning on
 22 the date of the enactment of this Act, the Comptroller
 23 General of the United States shall submit to the Congress
 24 a report analyzing the effects of global warming on the
 25 fiscal solvency of the National Flood Insurance Program.

1 (b) REPORT ON WYO COMPANIES.—The Comptroller
2 General of the United States shall conduct a study of
3 claims under flood insurance coverage provided through
4 insurance companies participating in the Write Your Own
5 program of the National Flood Insurance Program pursu-
6 ant to losses resulting from Hurricane Sandy of 2012,
7 which shall determine—

8 (1) how much profit such insurers made pursu-
9 ant to such claims;

10 (2) how many of such claims were made and
11 processed; and

12 (3) the amount of each such claim that was ap-
13 proved and paid.

14 Not later than the expiration of the 12-month period be-
15 ginning on the date of the enactment of this Act, the
16 Comptroller General shall submit a report to the Congress
17 regarding the conclusions of the study conducted pursuant
18 to this subsection.

19 **SEC. 12. REGULATIONS.**

20 Not later than the expiration of the 12-month period
21 beginning on the date of the enactment of this Act, the
22 Administrator of the Federal Emergency Management
23 Agency shall issue regulations necessary to carry out this
24 Act and the amendments made by this Act.

○