

115TH CONGRESS
2D SESSION

H. R. 7024

To establish a Federal standard in order to improve the Nation's resilience
to current and future flood risk.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2018

Mr. RASKIN (for himself, Mr. CURBELO of Florida, Mr. PANETTA, Ms. WASSERMAN SCHULTZ, Mr. DONOVAN, and Mr. VELA) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a Federal standard in order to improve the
Nation's resilience to current and future flood risk.

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.**

4 This Act may be cited as the “Federal Flood Manage-
5 ment Act of 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

1 (1) the term “Administrator” means the Ad-
2 ministrators of the Federal Emergency Management
3 Agency;

4 (2) the term “agency”—

5 (A) has the meaning given the term “Exec-
6 utive agency” in section 105 of title 5, United
7 States Code;

8 (B) includes military departments; and

9 (C) does not apply to an agency that does
10 not take agency actions in or affecting
11 floodplains;

12 (3) the term “agency action” means, with re-
13 spect to an agency—

14 (A) acquiring, managing, and disposing of
15 Federal lands and facilities;

16 (B) providing construction and improve-
17 ments that are undertaken, financed by, or as-
18 sisted by the Federal Government; and

19 (C) conducting Federal activities and pro-
20 grams that affect land use, including planning,
21 regulating, and licensing activities relating to
22 water and land resources;

23 (4) the term “base flood” means a flood that
24 has a not less than 1 percent chance of occurring in
25 a year;

1 (5) the term “critical action” means any agency
2 action with respect to which the head of the agency
3 determines a slight chance of flooding would present
4 an unacceptable amount of risk;

5 (6) the term “Executive Order 11988” means
6 Executive Order 11988 (42 Fed. Reg. 26951; relat-
7 ing to floodplain management);

8 (7) the term “federally funded project” means
9 an action in which Federal funds are used, with re-
10 spect to a structure or facility, for new construction,
11 for substantial improvement, or to address substan-
12 tial damage;

13 (8) the term “floodplain” means, subject to sec-
14 tion 4(b)(2), the lowland and relatively flat area that
15 adjoins inland and coastal waters (including flood-
16 prone areas of offshore islands);

17 (9) the term “National Flood Insurance Pro-
18 gram” means the program established under the Na-
19 tional Flood Insurance Act of 1968 (42 U.S.C. 4001
20 et seq.);

21 (10) the term “Standard” means the Federal
22 Flood Risk Management Standard set forth in Ap-
23 pendix G to Guidelines for Implementing Executive
24 Order 11988, Floodplain Management, and Execu-
25 tive Order 13690, Establishing a Federal Flood Risk

1 Management Standard and a Process for Further
2 Soliciting and Considering Stakeholder Input, pub-
3 lished on October 8, 2015; and

4 (11) the term “Water Resources Council”
5 means the Council established under section 101 of
6 the Water Resources Planning Act (42 U.S.C.
7 1962a).

8 **SEC. 3. SENSE OF CONGRESS.**

9 It is the sense of Congress that—

10 (1) it should be the policy of the United States
11 to improve the resiliency of communities and assets
12 of the Federal Government against the impacts of
13 flooding;

14 (2) the impacts of flooding are anticipated to
15 increase over time due to increased future risk and
16 greater development on floodplains;

17 (3) losses caused by flooding affect—

18 (A) the environment;

19 (B) the economic prosperity of the United
20 States;

21 (C) public health and safety; and

22 (D) the national security of the United
23 States;

24 (4) the Federal Government must take action,
25 informed by the best available and actionable

1 science, to improve the preparedness and resilience
2 of the United States with respect to flooding;

3 (5) Executive Order 11988 requires agencies to
4 avoid—

5 (A) to the maximum extent practicable, the
6 long- and short-term adverse impacts associated
7 with the occupancy and modification of
8 floodplains; and

9 (B) direct or indirect support of floodplain
10 development whenever a more practicable alter-
11 native is available;

12 (6) to implement Executive Order 11988, the
13 Federal Government has developed processes for
14 evaluating the impacts of Federal actions in or af-
15 fecting floodplains;

16 (7) in June 2013, an interagency effort to cre-
17 ate a new flood risk reduction standard for federally
18 funded projects was initiated;

19 (8) in establishing the standard described in
20 paragraph (7), the views of governors, mayors, and
21 interested members of the public were solicited and
22 considered;

23 (9) the result of the efforts described in para-
24 graphs (7) and (8) is the Standard, a flexible frame-

1 work to increase resilience against flooding and help
2 preserve the natural values of floodplains; and

3 (10) enacting the Standard will ensure that
4 agencies expand management from the base flood
5 level in effect as of the date of enactment of this Act
6 to a higher vertical elevation and a corresponding
7 horizontal floodplain in order to—

8 (A) address current and future flood risk;
9 and

10 (B) ensure that federally funded projects
11 last as long as intended.

12 **SEC. 4. FLOODPLAIN MANAGEMENT.**

13 (a) IN GENERAL.—The head of each agency shall
14 provide leadership and shall take action, when carrying
15 out an agency action, to—

16 (1) reduce the risk of losses resulting from
17 floods;

18 (2) minimize the impact of floods on human
19 safety, health, and welfare; and

20 (3) restore and preserve the natural and bene-
21 ficial values served by floodplains.

22 (b) AGENCY RESPONSIBILITIES.—

23 (1) IN GENERAL.—In carrying out an agency
24 action as described in subsection (a), the head of
25 each agency shall—

1 (A) evaluate the potential effects of any
2 agency action taken by the agency in a flood-
3 plain, as determined under paragraph (2);

4 (B) ensure that the planning programs and
5 budget requests of the agency reflect consider-
6 ation of flood hazards and the management of
7 floodplains; and

8 (C) prescribe procedures to implement the
9 policies and requirements of this Act—

10 (i) to the extent permitted by law; and

11 (ii) in accordance with the procedures
12 described in paragraph (3).

13 (2) DETERMINATION OF FLOODPLAINS.—The
14 head of an agency shall, when determining whether
15 an agency action will take place in a floodplain—

16 (A) use—

17 (i) the elevation and flood hazard
18 area, as determined by—

19 (I) a climate-informed science ap-
20 proach that—

21 (aa) uses the best available
22 actionable hydrologic and hydrau-
23 lic data and methods;

1 (bb) integrates current and
2 future changes in flooding based
3 on climate science; and

4 (cc) includes an emphasis on
5 whether the agency action is a
6 critical action;

7 (II) the freeboard value, reached
8 by adding an additional—

9 (aa) 2 feet to the base flood
10 elevation for an agency action
11 that is not a critical action; and

12 (bb) 3 feet to the base flood
13 elevation for an agency action
14 that is a critical action; or

15 (III) any other method that is
16 identified in any amendment made to
17 this Act; or

18 (ii) an area that has a 0.2 percent
19 chance of flooding in a year; and

20 (B) rely on—

21 (i) the best available information; and

22 (ii) the Flood Insurance Rate Map
23 published by the Administrator for the
24 community in which the agency action
25 shall take place.

1 (3) PROCEDURES.—The procedures described
2 in this paragraph are as follows:

3 (A) Before an agency takes an agency ac-
4 tion, the head of the agency shall determine
5 under paragraph (2) whether the proposed
6 agency action will take place in a floodplain.

7 (B) If an agency action described in sub-
8 paragraph (A) may have a significant effect on
9 the quality of the human environment, the eval-
10 uation required under paragraph (5) shall be
11 included in any statement prepared under sec-
12 tion 102(2)(C) of the National Environmental
13 Policy Act (42 U.S.C. 4332(2)(C)).

14 (C) If the head of an agency has deter-
15 mined to, or proposes to, conduct, support, or
16 allow an agency action that will take place in a
17 floodplain, as determined under paragraph (2),
18 the head of the agency shall—

19 (i) consider alternatives in order to
20 avoid adverse effects and incompatible de-
21 velopment in the floodplain;

22 (ii) when possible, rely on natural sys-
23 tems, ecosystem processes, and nature-
24 based approaches when considering alter-
25 natives under clause (i);

1 (iii) if the head of the agency deter-
2 mines that the only practicable alternative
3 consistent under law, including the require-
4 ments of this Act, requires taking an agen-
5 cy action in a floodplain, before taking the
6 agency action—

7 (I) design or modify the agency
8 action to minimize potential harm to
9 or within the floodplain consistent
10 with regulations issued under para-
11 graph (6); and

12 (II) prepare and distribute a no-
13 tice that contains an explanation with
14 respect to why the agency action shall
15 take place in the floodplain;

16 (iv) with respect to an agency action
17 relating to a program that is subject to
18 Circular A-95 of the Office of Manage-
19 ment and Budget, send a notice to the
20 State and area-wide clearinghouses for the
21 geographic areas that are affected by the
22 agency action that—

23 (I) is not more than 3 pages
24 long;

25 (II) includes—

1 (aa) a location map;

2 (bb) the reasons why the
3 agency action shall occur in a
4 floodplain;

5 (cc) a statement indicating
6 whether the agency action con-
7 forms to applicable State or local
8 floodplain protection standards;
9 and

10 (dd) a list of the alternatives
11 to the agency action that the
12 head of the agency considered;
13 and

14 (III) allows for a brief comment
15 period before the head of the agency
16 may take the agency action; and

17 (v) provide the opportunity for early
18 public review of any plan or proposal for
19 the agency action, including the develop-
20 ment of procedures for any Federal action
21 the impact of which is not significant
22 enough to require the preparation of a
23 statement under section 102(2)(C) of the
24 National Environmental Policy Act (42
25 U.S.C. 4332(2)(C)).

1 (4) REQUESTS FOR AUTHORIZATIONS AND AP-
2 PROPRIATIONS.—The head of an agency, when mak-
3 ing any request to the Director of the Office of Man-
4 agement and Budget for a new authorization or for
5 appropriations, shall indicate, if an agency action to
6 be proposed shall take place in a floodplain, as de-
7 termined under paragraph (2), whether the agency
8 action complies with this Act.

9 (5) WATER AND LAND USE PLANS.—

10 (A) IN GENERAL.—The head of an agency,
11 when formulating or evaluating any water and
12 land use plan, shall—

13 (i) take floodplain management into
14 account; and

15 (ii) require the use of land and water
16 resources that are appropriate when com-
17 pared with the degree of hazard that is in-
18 volved.

19 (B) CONSIDERATIONS.—The head of each
20 agency shall—

21 (i) provide for the adequate evaluation
22 and consideration of flood hazards with re-
23 spect to the regulations and operating pro-
24 cedures for the licenses, permits, and loan

1 or grant programs administered by the
2 agency; and

3 (ii) with respect to an applicant for a
4 license, permit, loan, or grant that is
5 issued or administered by the agency, en-
6 courage, and provide appropriate guidance
7 to, the applicant to evaluate, before sub-
8 mitting the application, the effects that the
9 application, if granted, would have on
10 floodplains.

11 (6) REGULATIONS AND PROCEDURES.—To the
12 extent permitted by law, the head of each agency
13 shall, in consultation with the Water Resources
14 Council, the Federal Interagency Floodplain Man-
15 agement Task Force, the Administrator, and the
16 Council on Environmental Quality—

17 (A) issue regulations, or amend regulations
18 that are in effect as of the date of enactment
19 of this Act, to comply with the requirements of
20 this Act; and

21 (B) amend the regulations described in
22 subparagraph (A) as warranted.

23 (c) ANNUAL REASSESSMENT.—The Mitigation
24 Framework Leadership Group, in consultation with the

1 Federal Interagency Floodplain Management Task Force,
2 shall—

3 (1) annually reassess the implementation of the
4 requirements imposed under this section; and

5 (2) provide recommendations to the Water Re-
6 sources Council for updates to the requirements im-
7 posed under this section that are warranted based
8 on accurate and actionable science that takes into
9 account changes to climate and other changes in
10 flood risk.

11 **SEC. 5. FEDERAL FLOOD RISK MANAGEMENT STANDARD.**

12 (a) IN GENERAL.—The head of an agency shall—

13 (1) except as provided in subsection (b), with
14 respect to a federally funded project undertaken by
15 the agency, ensure that the agency complies with the
16 Standard; and

17 (2) if the agency has responsibility for the ad-
18 ministration or management of Federal real prop-
19 erty and facilities, in addition to the requirements
20 under section 4 and paragraph (1)—

21 (A) require the construction of Federal
22 structures and facilities to comply with—

23 (i) the regulations and procedures
24 issued under section 4(b)(6); and

1 (ii) any regulations issued under the
2 National Flood Insurance Program unless
3 those regulations are demonstrably inap-
4 propriate for a structure or facility;

5 (B) apply accepted floodproofing and other
6 flood protection measures to the construction or
7 rehabilitation of a structure or facility that is
8 located in a floodplain;

9 (C) when practicable, elevate a structure
10 above the floodplain instead of filling in land;

11 (D) provide on structures and, where ap-
12 propriate, other pieces of property a con-
13 spicuous delineation of past and probable flood
14 height—

15 (i) if the structure or other prop-
16 erty—

17 (I) is used by the general public;

18 and

19 (II)(aa) has suffered flood dam-
20 age; or

21 (bb) is in an identified flood haz-
22 ard area; and

23 (ii) in order to enhance public aware-
24 ness of, and knowledge about, flood haz-
25 ards; and

1 (E) when Federal property in a floodplain
2 is proposed for lease, easement, right-of-way, or
3 disposal to a non-Federal public or private
4 party—

5 (i) reference in the conveyance those
6 uses that are restricted under Federal,
7 State, or local regulations relating to
8 floodplains; and

9 (ii)(I) except where prohibited by law,
10 attach any other appropriate restrictions to
11 the uses of the property by the grantee or
12 purchaser, as applicable, and any succes-
13 sors; or

14 (II) withhold the property from con-
15 veyance.

16 (b) EXEMPTION.—The head of an agency may ex-
17 empt a federally funded project from the requirement
18 under subsection (a)(1) if—

19 (1) the exemption is in the interest of national
20 security;

21 (2) the undertaking of the federally funded
22 project is—

23 (A) because of an emergency; or

1 (B) a mission-critical requirement relating
2 to a national security interest or an emergency;
3 or
4 (3) applying the Standard to a federally funded
5 project is demonstrably inappropriate.

6 (c) UPDATES.—Not less frequently than once every
7 5 years, the Water Resources Council shall update the
8 Standard, as determined appropriate by the Water Re-
9 sources Council.

10 **SEC. 6. FINANCIAL TRANSACTIONS IN AREAS SUBJECT TO**
11 **FLOODING.**

12 In addition to any responsibilities under this Act and
13 sections 102, 202, and 205 of the Flood Disaster Protec-
14 tion Act of 1973 (42 U.S.C. 4012a, 4106, and 4128), the
15 head of any agency that guarantees, approves, regulates,
16 or insures any financial transaction relating to an area
17 that is subject to a base flood shall, before completing any
18 action relating to that transaction, inform any private par-
19 ties that are participating in the transaction about the
20 hazards of locating a structure in that area.

21 **SEC. 7. REPORTS.**

22 (a) IN GENERAL.—Not later than 1 year after the
23 date of enactment of this Act, the head of each agency
24 shall submit to the Council on Environmental Quality a

1 report regarding how the requirements of this Act impact
2 the procedures and operations of the agency.

3 (b) ANALYSIS OF STANDARD.—Each report sub-
4 mitted under subsection (a) shall contain a separate anal-
5 ysis regarding how the requirement under section 5(a)(1)
6 has impacted agencies.

7 (c) EVALUATION.—Not less frequently than once
8 every 2 years, the Water Resources Council shall—

9 (1) evaluate the procedures, including the effec-
10 tiveness of the procedures, of each agency relating to
11 the requirements of this Act, taking into account
12 each report submitted under subsection (a); and

13 (2) submit to the appropriate committees of
14 Congress a report that contains the result of the
15 evaluation required under paragraph (1).

16 **SEC. 8. GENERAL PROVISIONS.**

17 (a) RULES OF CONSTRUCTION.—Nothing in this Act
18 may be construed—

19 (1) as applying to assistance that is provided
20 for emergency work that is—

21 (A) performed under sections 403 and 502
22 of the Robert T. Stafford Disaster Relief and
23 Emergency Assistance Act (42 U.S.C. 5170b
24 and 5192); and

25 (B) essential to—

1 (i) save human life; and

2 (ii) protect—

3 (I) property; and

4 (II) public health and safety; or

5 (2) to impair or otherwise affect—

6 (A) the authority granted by law to an
7 agency or the head of an agency; or

8 (B) the functions of the Director of the Of-
9 fice of Management and Budget relating to
10 budgetary, administrative, or legislative pro-
11 posals.

12 (b) IMPLEMENTATION.—This Act shall be imple-
13 mented consistent with applicable law and subject to the
14 availability of appropriations.

15 (c) RESPONSIBILITIES OF WATER RESOURCES
16 COUNCIL.—Except as otherwise expressly provided, the
17 Water Resources Council shall carry out the responsibil-
18 ities of the Council under this Act in consultation with
19 the Mitigation Framework Leadership Group.

20 **SEC. 9. ASSUMPTION OF RESPONSIBILITIES.**

21 If subparagraphs (A), (B), and (C) of section 4(b)(3)
22 apply to a project to which section 104(h) of the Housing
23 and Community Development Act of 1974 (42 U.S.C.
24 5304(h)) applies, an appropriate applicant may assume
25 the responsibilities under those subparagraphs if the appli-

1 cant has also assumed, with respect to the project, all re-
2 sponsibilities for environmental review, decisionmaking,
3 and action under the National Environmental Policy Act
4 of 1969 (42 U.S.C. 4321 et seq.).

○