

TO REQUIRE THE USE OF REPLACEMENT COST VALUE IN DETERMINING
THE PREMIUM RATES FOR FLOOD INSURANCE COVERAGE UNDER THE
NATIONAL FLOOD INSURANCE ACT, AND FOR OTHER PURPOSES

—————
JULY 14, 2017.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2565]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2565) to require the use of replacement cost value in determining the premium rates for flood insurance coverage under the National Flood Insurance Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. USE OF REPLACEMENT COST IN DETERMINING PREMIUM RATES.

(a) STUDY OF RISK RATING REDESIGN FLOOD INSURANCE PREMIUM RATING OPTIONS.—

(1) STUDY.—The Administrator of the Federal Emergency Management Agency shall conduct a study to—

(A) evaluate insurance industry best practices for risk rating and classification, including practices related to replacement cost value in premium rate estimations;

(B) assess options, methods, and strategies for including replacement cost value in the Administrator's estimates under section 1307(a)(1) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)(1));

(C) provide recommendations for including replacement cost value in the estimate of the risk premium rates for flood insurance under such section 1307(a)(1);

(D) identify an appropriate methodology to incorporate replacement cost value into the Administrator's estimates under such section 1307(a)(1);

(E) develop a feasible implementation plan and projected timeline for including replacement cost value in the estimates of risk premium rates for

flood insurance made available under the National Flood Insurance Program.

(2) REPORT.—

(A) REQUIREMENT.—Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Administrator shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that contains the results and conclusions of the study required under paragraph (1).

(B) CONTENTS.—The report submitted under subparagraph (A) shall include—

- (i) an analysis of the recommendations resulting from the study under paragraph (1) and any potential impacts on the National Flood Insurance Program, including cost considerations;
- (ii) a description of any actions taken by the Administrator to implement the study recommendations; and
- (iii) a description of any study recommendations that have been deferred or not acted upon, together with a statement explaining the reasons for such deferral or inaction.

(b) USE OF REPLACEMENT COST VALUE IN PREMIUM RATES; IMPLEMENTATION.—

(1) ESTIMATED RATES.—Paragraph (1) of section 1307(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4014(a)(1)) is amended, in the matter preceding subparagraph (A), by inserting after “flood insurance” the following: “, which shall incorporate replacement cost value, and”.

(2) CHARGEABLE RATES.—Subsection (b) of section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(b)) is amended, in the matter preceding paragraph (1), by inserting after “Such rates” the following: “shall incorporate replacement cost value and”.

(3) EFFECTIVE DATE.—The amendments under paragraphs (1) and (2) of this subsection shall be made upon the expiration of the 12-month period beginning on the date of the enactment of this Act.

(4) APPLICABILITY AND PHASE-IN.—The Administrator of the Federal Emergency Management Agency shall apply the amendments under paragraphs (1) and (2) to flood insurance coverage made available under the National Flood Insurance Act of 1968 for properties located in various geographic regions in the United States such that—

(A) over the period beginning upon the expiration of the period referred to in paragraph (3) of this subsection and ending on December 31, 2020, the requirement under such amendments shall be gradually phased in geographically throughout the United States as sufficient information for such implementation becomes available; and

(B) after the expiration of such period referred to in subparagraph (A), such amendments shall apply to all flood insurance coverage made available under the National Flood Insurance Act of 1968.

PURPOSE AND SUMMARY

Introduced by Representative Blaine Luetkemeyer on May 19, 2017, H.R. 2565 would require the use of replacement cost value in determining the premium rates for flood insurance coverage under the National Flood Insurance Act, and for other purposes, would require the Federal Emergency Management Agency (FEMA) to conduct a study on the feasibility of incorporating the actual replacement cost value for each National Flood Insurance Program covered property. Additionally, H.R. 2565 amends the National Flood Insurance Act of 1968 to require FEMA to use actual replacement cost values as part of the determination of chargeable risk premiums.

BACKGROUND AND NEED FOR LEGISLATION

Floods are among the most frequently occurring and costly natural disasters. Most declarations of federal disasters by the Federal Emergency Management Agency (FEMA) are related to flooding. Yet despite the frequency and severity of losses that result from

flooding, the private insurance market generally did not provide insurance for flooding; when it did, insurance for flood-related damage can be expensive because the properties most at-risk tend to be highly concentrated geographically and the potential risk of economic losses is extremely high.

To supplement the availability of flood insurance in the private market, Congress, in 1968, created the National Flood Insurance Program (NFIP), which is administered by FEMA and provides flood insurance to approximately 5.1 million policyholders across the country. In exchange for premiums paid by policyholders, NFIP makes federally backed flood insurance available to homeowners and other property owners (for example, businesses, churches, and farmers) in these communities.

Homeowners with mortgages held by federally regulated lenders on property in participating communities identified by FEMA to be in Special Flood Hazard Areas are required to purchase flood insurance (mandatory purchase requirement). NFIP coverage limits vary by program (regular or emergency) and property type (for example, residential or nonresidential). In NFIP's regular program, the maximum coverage limits for residential policyholders are \$250,000 for buildings and \$100,000 for contents. For commercial policyholders (that is, those with policies for nonresidential properties), the maximum coverage limit is \$500,000 per building and \$500,000 for contents owned by the building owner. There is additional coverage for contents owned by the tenants.

Residents and business owners in over 22,000 participating communities across the United States and its territories are able to buy NFIP flood insurance policies through insurance agents and companies that participate as third-party administrators in the "Write Your Own" (WYO) program. The WYO program allows private insurance carriers to issue and service government underwritten and taxpayer backed NFIP policies with no private financial liability from the insurer. Insurance companies that participate in the WYO program receive an expense allowance for policies they write and the claims they process. In addition, their agents earn a commission for the policies they sell. The federal government, however, retains responsibility for managing the risk and paying claims, as well as covering any litigation costs should a WYO insurer be sued in court.

Property owners can purchase flood insurance through the NFIP only if their communities participate in the NFIP. To participate in the NFIP, a community must agree to abide by certain statutory provisions intended to mitigate the risk of flooding, such as building codes that require new structures built in floodplains (high-risk areas) to be protected against flooding or to be elevated above the 100-year floodplain.

As of June 5, 2017, the NFIP has an outstanding debt of \$24.6 billion borrowed from taxpayers, with roughly \$1.1 billion available cash-on-hand and \$5.825 billion remaining of its total temporary \$30.425 billion Treasury borrowing authority. The NFIP's debt results primarily from its borrowing to pay claims relating to the Gulf Coast hurricanes in 2005 and Superstorm Sandy in October 2012. This borrowing stems from a structural imbalance in how the NFIP measures and prices for risk, resulting in only 46 percent of premium dollars collected in 2016 being available for the payments

of claims. With such a low portion of premiums available to pay claims, the pressure on the NFIP to borrow from taxpayers increases. The NFIP's structural budget crisis has required periodic legislation to increase its borrowing authority, the most recent example of which occurred in January 2013 when Congress increased the NFIP's borrowing authority by \$9.7 billion—from \$20.725 billion to its current \$30.425 billion level.

H.R. 2565 would require FEMA to conduct a study to evaluate insurance industry best practices for risk rating and classification, including practices related to replacement cost value in premium rate estimation. Upon submission of the study to Congress, the bill requires FEMA to incorporate up-to-date replacement cost values, by structure, when calculating annual chargeable premium rates, as opposed to the current practice that relied upon a national average, over a 1–3 year period.

In FEMA's documents that outline the methods used to develop flood insurance premiums, the agency states that it does not consider actual replacement costs when it determines NFIP premiums. Instead, the NFIP uses fixed national averages for replacement costs when it determines customer premiums. By using fixed replacement values based on historical averages, the NFIP's current premium construction process guarantees that the lower-income policyholders will subsidize wealthier homeowners, because policyholders below the average would pay up to that national average and policyholders above the average (higher income policyholders) would pay down to that national average.

H.R. 2565 fixes this inequity and provides relief to lower-income policyholders by requiring the NFIP to incorporate up-to-date replacement cost values, by structure, when calculating annual chargeable premium rates, as opposed to the current practice that relies upon a national average.

HEARINGS

The Committee on Financial Services' Subcommittee on Housing & Insurance held two hearings examining matters relating to H.R. 2565 on March 9, 2017 and March 16, 2017. The Committee on Financial Services held a hearing examining matters relating to H.R. 2565 on June 7, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 15, 2017 to consider H.R. 2565. The Committee ordered H.R. 2565 to be reported favorably to the House, as amended, by a recorded vote of 34 ayes and 25 nays (Recorded vote no. FC-66), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Mr. Luetkemeyer, by voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill, as amended, favorably to the House. The motion was agreed to by

5

a recorded vote of 34 ayes and 25 nays (Recorded vote no. FC-66),
a quorum being present.

Present	Representative	Yeas	Nays
	Mr. HENSARLING, <i>Chairman</i>	✓	
	Mr. McHENRY	✓	
	Mr. KING	✓	
	Mr. ROYCE	✓	
	Mr. LUCAS	✓	
	Mr. PEARCE	✓	
	Mr. POSEY	✓	
	Mr. LUETKEMEYER	✓	
	Mr. HUIZENGA	✓	
	Mr. DUFFY	✓	
	Mr. STIVERS	✓	
	Mr. HULTGREN	✓	
	Mr. ROSS	✓	
	Mr. PITTENGER	✓	
	Mrs. WAGNER	✓	
	Mr. BARR	✓	
	Mr. ROTHFUS	✓	
	Mr. MESSER	✓	
	Mr. TIPTON	✓	
	Mr. WILLIAMS	✓	
	Mr. POLIQUIN	✓	
	Mrs. LOVE	✓	
	Mr. HILL	✓	
	Mr. EMMER	✓	
	Mr. ZELDIN	✓	
	Mr. TROTT	✓	
	Mr. LOUDERMILK	✓	
	Mr. MOONEY	✓	
	Mr. MACARTHUR	✓	
	Mr. DAVIDSON	✓	
	Mr. BUDD	✓	
	Mr. KUSTOFF	✓	
	Ms. TENNEY	✓	
	Mr. HOLLINGSWORTH	✓	
	Ms. WATERS, <i>Ranking Member</i>		✓
	Mrs. MALONEY		✓
	Ms. VELÁZQUEZ		✓
	Mr. SHERMAN		✓
	Mr. MEEKS		✓
	Mr. CAPUANO		✓
	Mr. CLAY		✓
	Mr. LYNCH		✓
	Mr. SCOTT		✓
	Mr. GREEN		✓
	Mr. CLEAVER		✓
	Ms. MOORE		✓
	Mr. ELLISON		✓
	Mr. PERLMUTTER		✓
	Mr. HIMES		✓
	Mr. FOSTER		✓
	Mr. KILDEE		✓
	Mr. DELANEY		✓
	Ms. SINEMA	✓	
	Mrs. BEATTY		✓
	Mr. HECK		✓
	Mr. VARGAS		✓
	Mr. GOTTHEIMER		✓
	Mr. GONZALEZ		✓
	Mr. CRIST		✓
	Mr. KIHUEN		✓

Committee on Financial Services

115th CongressDATE: 6/21/17Measure HR 2565Amendment No. MTA

Offered by: _____

Agreed To	Yes	No	Wdrn
	✓		

Voice Vote	Yeas	Nays	Prsnt
	34	25	

Record vote no. FC- 66

As Amended

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2565 will protect taxpayers and policyholders by incorporating up-to-date replacement cost values, by structure, when calculating annual chargeable premium rates.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 14, 2017.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2565, a bill to require the use of replacement cost value in determining the premium rates for flood insurance coverage under the National Flood Insurance Act, and for other purposes.

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

Sincerely,

MARK P. HADLEY
(For Keith Hall).

Enclosure.

H.R. 2565—A bill to require the use of replacement cost value in determining the premium rates for flood insurance coverage under the National Flood Insurance Act, and for other purposes

Summary: H.R. 2565 would direct the Federal Emergency Management Agency (FEMA) to analyze different methods and develop a plan for incorporating the actual replacement cost of each structure insured by the National Flood Insurance Program (NFIP) into the premium charged to each property owner. The bill also would require FEMA to submit the plan and an analysis of any alternative plans it considered to the Congress. FEMA would then be required to phase in its plan over a three-year period.

CBO estimates that implementing H.R. 2565 would cost \$15 million over the 2018–2022 period, assuming appropriation of the necessary amounts. CBO estimates that enacting the legislation would affect direct spending; therefore, pay-as-you-go procedures apply. However, those effects would not be significant. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 2565 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2565 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2565 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

	By fiscal year, in millions of dollars—						
	2017	2018	2019	2020	2021	2022	2017–2022
INCREASES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	0	3	3	3	3	3	15
Estimated Outlays	0	3	3	3	3	3	15

Basis of estimate: For this estimate, CBO assumes that H.R. 2565 will be enacted near the end of fiscal year 2017 and that the necessary amounts will be appropriated each year. Estimated outlays are based on historical spending patterns for similar programs.

NFIP policies are available to insure up to \$250,000 of the value of residential properties or up to \$500,000 of the value of nonresidential properties. In general, properties with a greater replacement value incur more costly flood claims than those with smaller replacement values—even when those properties face the same risk of flooding. However, properties that face the same flood risk are charged the same premium even if the replacement value of those structures is significantly different. Under current law, FEMA accounts for the different replacement value of structures with NFIP policies by incorporating an under-insurance adjustment factor. That adjustment factor is applied to all NFIP premiums such that premiums are sufficient to cover expected claims.

Under H.R. 2565, FEMA would be required to develop and implement a plan to incorporate the replacement value of each indi-

vidual insured structure into the premium charged to the owner of that structure. That would change the methodology for determining the adjustment factor for replacement values: instead of using an average factor to adjust all policies, FEMA would be required to calculate and use a specific adjustment factor for each individual policy based on its coverage premiums and the replacement value of the individual structure.

CBO expects the changes required under H.R. 2565 would not significantly alter the total amount of premiums collected from NFIP policyholders in any year. Rather, the changes would adjust some policyholders' premiums upward and other policyholders' premiums downward such that the total premium collections would remain about the same as they otherwise would be under current law.

According to FEMA, the agency is already preparing to determine how to incorporate replacement cost value into premiums as a part of a larger effort to redesign premiums for the NFIP. Based on an analysis of information from FEMA, CBO estimates that implementing H.R. 2565 would cost \$15 million over the 2018–2022 period to obtain additional data from policyholders to complete the redesign of NFIP premiums and incorporate replacement values for each policy.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Because using a specific under-insurance adjustment factor for each individual NFIP policy rather than an average adjustment factor for all policies would not affect the total NFIP premiums collected, CBO expects that enacting H.R. 2565 would have no significant effect on direct spending in any year. Enacting the bill would not affect revenues.

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 2565 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 2565 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal costs: Robert Reese; Impact on state, local, and tribal governments: Rachel Austin; Impact on the private sector: Logan Smith.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2565 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(c)(5) of rule XIII, the Committee states that no provision of H.R. 2565 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.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee states that H.R. 2565 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1 Use of replacement cost in determining premium rates

The Administrator shall conduct a study to evaluate insurance industry best practices for risk rating and classification, including practices related to replacement cost value in premium rate estimations and developing a feasible implementation plan and projected timeline for including replacement costs value in the estimates of risk premium rates for flood insurance made available under the NFIP. Effective twelve months after the bill's enactment, the Administrator shall submit to Congress a report that contains the results and conclusions of the study. The report shall include an analysis of the recommendations resulting from the study and any potential impacts on the NFIP; a description of any actions taken by the Administrator to implement the study recommendations; and a description of any study recommendations that have been deferred or not acted upon. This section also requires the Administrator to incorporate up-to-date replacement cost values, by structure, when calculating annual chargeable premium rates, as opposed to the current practice that relied upon a national average, over a 1–3 year period.

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 (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

NATIONAL FLOOD INSURANCE ACT OF 1968

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TITLE XIII—NATIONAL FLOOD INSURANCE

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CHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

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ESTIMATES OF PREMIUM RATES

SEC. 1307. (a) The Administrator is authorized to undertake and carry out such studies and investigations and receive or exchange such information as may be necessary to estimate, and shall from time to time estimate, on an area, subdivision, or other appropriate basis—

(1) the risk premium rates for flood insurance, which shall incorporate replacement cost value, and which—

(A) based on consideration of—

(i) the risk involved and accepted actuarial principles; and

(ii) the flood mitigation activities that an owner or lessee has undertaken on a property, including differences in the risk involved due to land use measures, floodproofing, flood forecasting, and similar measures, and

(B) including—

(i) the applicable operating costs and allowances set forth in the schedules prescribed under section 1311 and reflected in such rates,

(ii) any administrative expenses (or portion of such expenses) of carrying out the flood insurance program which, in his discretion, should properly be reflected in such rates,

(iii) any remaining administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360) not included under clause (ii), which shall be recovered by a fee charged to policyholders and such fee shall not be subject to any agents' commissions, company expense allowances, or State or local premium taxes, and

(iv) all costs, as prescribed by principles and standards of practice in ratemaking adopted by the American Academy of Actuaries and the Casualty Actuarial Society, including—

(I) an estimate of the expected value of future costs,

(II) all costs associated with the transfer of risk, and

(III) the costs associated with an individual risk transfer with respect to risk classes, as defined by the Administrator,

would be required in order to make such insurance available on an actuarial basis for any types and classes of properties for which insurance coverage is available under section 1305(a) (or is recommended to the Congress under section 1305(b));

(2) the rates, if less than the rates estimated under paragraph (1), which would be reasonable, would encourage prospective insureds to purchase flood insurance, and would be consistent with the purposes of this title, and which, together with a fee charged to policyholders that shall not be not subject to any agents' commission, company expenses allowances, or State or local premium taxes, shall include any administrative expenses incurred in carrying out the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360), except that the Administrator shall not estimate rates under this paragraph for—

(A) any residential property which is not the primary residence of an individual;

(B) any severe repetitive loss property;

(C) any property that has incurred flood-related damage in which the cumulative amounts of payments under this title equaled or exceeded the fair market value of such property;

(D) any business property; or

(E) any property which on or after the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012 has experienced or sustained—

(i) substantial damage exceeding 50 percent of the fair market value of such property; or

(ii) substantial improvement exceeding 50 percent of the fair market value of such property; and

(3) the extent, if any, to which federally assisted or other flood protection measures initiated after the date of the enactment of this title affect such rates.

(b) In carrying out subsection (a), the Administrator shall, to the maximum extent feasible and on a reimbursable basis, utilize the services of the Department of the Army, the Department of the Interior, The Department of Agriculture, the Department of Commerce, and the Tennessee Valley Authority, and, as appropriate, other Federal departments or agencies, and for such purposes may enter into agreements or other appropriate arrangements with any persons.

(c) The Administrator shall give priority to conducting studies and investigations and making estimates under this section in those States or areas (or subdivisions thereof) which he has determined have evidenced a positive interest in securing flood insurance coverage under the flood insurance program.

(d) Notwithstanding any other provision of law, any structure existing on the date of enactment of the Flood Disaster Protection Act of 1973 and located within Avoyelles, Evangeline, Rapides, or Saint Landry Parish in the State of Louisiana, which the Administrator determines is subject to additional flood hazards as a result of the construction or operation of the Atchafalaya Basin Levee System, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions

of this title) at premium rates that shall not exceed those which would be applicable if such additional hazards did not exist.

(e) Notwithstanding any other provision of law, any community that has made adequate progress, acceptable to the Administrator, on the construction or reconstruction of a flood protection system which will afford flood protection for the one-hundred-year frequency flood as determined by the Administrator, shall be eligible for flood insurance under this title (if and to the extent it is eligible for such insurance under the other provisions of this title) at premium rates not exceeding those which would be applicable under this section if such flood protection system had been completed. The Administrator shall find that adequate progress on the construction or reconstruction of a flood protection system, based on the present value of the completed flood protection system, has been made only if: (1) 100 percent of the cost of the system has been authorized; (2) at least 60 percent of the cost of the system has been appropriated; (3) at least 50 percent of the cost of the system has been expended; and (4) the system is at least 50 percent completed. Notwithstanding any other provision of law, in determining whether a community has made adequate progress on the construction, reconstruction, or improvement of a flood protection system, the Administrator shall consider all sources of funding, including Federal, State, and local funds.

(f) Notwithstanding any other provision of law, this subsection shall apply to riverine and coastal levees that are located in a community which has been determined by the Administrator of the Federal Emergency Management Agency to be in the process of restoring flood protection afforded by a flood protection system that had been previously accredited on a Flood Insurance Rate Map as providing 100-year frequency flood protection but no longer does so, and shall apply without regard to the level of Federal funding of or participation in the construction, reconstruction, or improvement of the flood protection system. Except as provided in this subsection, in such a community, flood insurance shall be made available to those properties impacted by the disaccreditation of the flood protection system at premium rates that do not exceed those which would be applicable to any property located in an area of special flood hazard, the construction of which was started prior to the effective date of the initial Flood Insurance Rate Map published by the Administrator for the community in which such property is located. A revised Flood Insurance Rate Map shall be prepared for the community to delineate as Zone AR the areas of special flood hazard that result from the disaccreditation of the flood protection system. A community will be considered to be in the process of restoration if—

- (1) the flood protection system has been deemed restorable by a Federal agency in consultation with the local project sponsor;
- (2) a minimum level of flood protection is still provided to the community by the disaccredited system; and
- (3) restoration of the flood protection system is scheduled to occur within a designated time period and in accordance with a progress plan negotiated between the community and the Federal Emergency Management Agency.

Communities that the Administrator of the Federal Emergency Management Agency determines to meet the criteria set forth in paragraphs (1) and (2) as of January 1, 1992, shall not be subject to revised Flood Insurance Rate Maps that contravene the intent of this subsection. Such communities shall remain eligible for C zone rates for properties located in zone AR for any policy written prior to promulgation of final regulations for this section. Floodplain management criteria for such communities shall not require the elevation of improvements to existing structures and shall not exceed 3 feet above existing grade for new construction, provided the base flood elevation based on the discredited flood control system does not exceed five feet above existing grade, or the remaining new construction in such communities is limited to infill sites, rehabilitation of existing structures, or redevelopment of previously developed areas.

The Administrator of the Federal Emergency Management Agency shall develop and promulgate regulations to implement this subsection, including minimum floodplain management criteria, within 24 months after the date of enactment of this subsection.

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

(1) any policy under the flood insurance program that has lapsed in coverage, unless the decision of the policy holder to permit a lapse in flood insurance coverage was as a result of the property covered by the policy no longer being required to retain such coverage; or

(2) any prospective insured who refuses to accept any offer for mitigation assistance by the Administrator (including an offer to relocate), including an offer of mitigation assistance—

(A) following a major disaster, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122); or

(B) in connection with—

(i) a repetitive loss property; or

(ii) a severe repetitive loss property.

(h) DEFINITION.—In this section, the term “severe repetitive loss property” has the following meaning:

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

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

(B) has incurred flood-related damage—

(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this chapter, with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

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

ESTABLISHMENT OF CHARGEABLE PREMIUM RATES

SEC. 1308. (a) On the basis of estimates made under section 1307 and such other information as may be necessary, the Administrator shall from time to time prescribe, after providing notice—

(1) chargeable premium rates for any types and classes of properties for which insurance coverage shall be available under section 1305 (at less than the estimated risk premium rates under section 1307(a)(1), where necessary), and

(2) the terms and conditions under which, and the areas (including subdivisions thereof) within which such rates shall apply.

(b) Such rates *shall incorporate replacement cost value and shall*, insofar as practicable, be—

(1) based on a consideration of the respective risks involved, including differences in risks due to land use measures, flood-proofing, flood forecasting, and similar measures;

(2) adequate, on the basis of accepted actuarial principles, to provide reserves for anticipated losses, or if less than such amount consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance and with the purposes of this title;

(3) adequate, together with the fee under paragraph (1)(B)(iii) or (2) of section 1307(a), to provide for any administrative expenses of the flood insurance and floodplain management programs (including the costs of mapping activities under section 1360);

(4) stated so as to reflect the basis for such rates, including the differences (if any) between the estimated risk premium rates under section 1307(a)(1) and the estimated rates under section 1307(a)(2); and

(5) adequate, on the basis of accepted actuarial principles, to cover the average historical loss year obligations incurred by the National Flood Insurance Fund.

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

(1) POST-FIRM PROPERTIES.—Any property the construction or substantial improvement of which the Administrator determines has been started after December 31, 1974, or started after the effective date of the initial rate map published by the Administrator under paragraph (2) of section 1360 for the area in which such property is located, whichever is later, except that the chargeable rate for properties under this paragraph shall be subject to the limitation under subsection (e).

(2) CERTAIN LEASED COASTAL AND RIVER PROPERTIES.—Any property leased from the Federal Government (including residential and nonresidential properties) that the Administrator determines is located on the river-facing side of any dike, levee,

or other riverine flood control structure, or seaward of any seawall or other coastal flood control structure.

(d) With respect to any chargeable premium rate prescribed under this section, a sum equal to the portion of the rate that covers any administrative expenses of carrying out the flood insurance and floodplain management programs which have been estimated under paragraphs (1)(B)(ii) and (1)(B)(iii) of section 1307(a) or paragraph (2) of such section (including the fees under such paragraphs), shall be paid to the Administrator. The Administrator shall deposit the sum in the National Flood Insurance Fund established under section 1310.

(e) ANNUAL LIMITATION ON PREMIUM INCREASES.—Except with respect to properties described under paragraph (2) of subsection (c), and notwithstanding any other provision of this title—

(1) the chargeable risk premium rate for flood insurance under this title for any property may not be increased by more than 18 percent each year, except—

(A) as provided in paragraph (4);

(B) in the case of property identified under section 1307(g); or

(C) in the case of a property that—

(i) is located in a community that has experienced a rating downgrade under the community rating system program carried out under section 1315(b);

(ii) is covered by a policy with respect to which the policyholder has—

(I) decreased the amount of the deductible; or

(II) increased the amount of coverage; or

(iii) was misrated;

(2) the chargeable risk premium rates for flood insurance under this title for any properties initially rated under section 1307(a)(2) within any single risk classification, excluding properties for which the chargeable risk premium rate is not less than the applicable estimated risk premium rate under section 1307(a)(1), shall be increased by an amount that results in an average of such rate increases for properties within the risk classification during any 12-month period of not less than 5 percent of the average of the risk premium rates for such properties within the risk classification upon the commencement of such 12-month period;

(3) the chargeable risk premium rates for flood insurance under this title for any properties within any single risk classification may not be increased by an amount that would result in the average of such rate increases for properties within the risk classification during any 12-month period exceeding 15 percent of the average of the risk premium rates for properties within the risk classification upon the commencement of such 12-month period; and

(4) the chargeable risk premium rates for flood insurance under this title for any properties described in subparagraphs (A) through (E) of section 1307(a)(2) shall be increased by 25 percent each year, until the average risk premium rate for such properties is equal to the average of the risk premium rates for properties described under paragraph (3).

(f) ADJUSTMENT OF PREMIUM.—Notwithstanding any other provision of law, if the Administrator determines that the holder of a flood insurance policy issued under this Act is paying a lower premium than is required under this section due to an error in the flood plain determination, the Administrator may only prospectively charge the higher premium rate.

(g) FREQUENCY OF PREMIUM COLLECTION.—With respect to any chargeable premium rate prescribed under this section, the Administrator shall provide policyholders that are not required to escrow their premiums and fees for flood insurance as set forth under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) with the option of paying their premiums annually or monthly.

(h) RULE OF CONSTRUCTION.—For purposes of this section, the calculation of an “average historical loss year”—

- (1) includes catastrophic loss years; and
- (2) shall be computed in accordance with generally accepted actuarial principles.

(i) RATES FOR PROPERTIES NEWLY MAPPED INTO AREAS WITH SPECIAL FLOOD HAZARDS.—Notwithstanding subsection (f), the premium rate for flood insurance under this title that is purchased on or after the date of the enactment of this subsection—

- (1) on a property located in an area not previously designated as having special flood hazards and that, pursuant to any issuance, revision, updating, or other change in a flood insurance map, becomes designated as such an area; and
- (2) where such flood insurance premium rate is calculated under subsection (a)(1) of section 1307 (42 U.S.C. 4014(a)(1)), shall for the first policy year be the preferred risk premium for the property and upon renewal shall be calculated in accordance with subsection (e) of this section until the rate reaches the rate calculated under subsection (a)(1) of section 1307.

(j) PREMIUMS AND REPORTS.—In setting premium risk rates, in addition to striving to achieve the objectives of this title the Administrator shall also strive to minimize the number of policies with annual premiums that exceed one percent of the total coverage provided by the policy. For any policies premiums that exceed this one percent threshold, the Administrator shall report such exceptions to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(k) CONSIDERATION OF MITIGATION METHODS.—In calculating the risk premium rate charged for flood insurance for a property under this section, the Administrator shall take into account the implementation of any mitigation method identified by the Administrator in the guidance issued under section 1361(d) (42 U.S.C. 4102(d)).

(l) CLEAR COMMUNICATIONS.—The Administrator shall clearly communicate full flood risk determinations to individual property owners regardless of whether their premium rates are full actuarial rates.

(m) PROTECTION OF SMALL BUSINESSES, NON-PROFITS, HOUSES OF WORSHIP, AND RESIDENCES.—

- (1) REPORT.—Not later than 18 months after the date of the enactment of this section and semiannually thereafter, the Ad-

ministrator shall monitor and report to Committee on Financial Services of the House Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, the Administrator's assessment of the impact, if any, of the rate increases required under subparagraphs (A) and (D) of section 1307(a)(2) and the surcharges required under section 1308A on the affordability of flood insurance for—

- (A) small businesses with less than 100 employees;
- (B) non-profit entities;
- (C) houses of worship; and
- (D) residences with a value equal to or less than 25 percent of the median home value of properties in the State in which the property is located.

(2) RECOMMENDATIONS.—If the Administrator determines that the rate increases or surcharges described in paragraph (1) are having a detrimental effect on affordability, including resulting in lapsed policies, late payments, or other criteria related to affordability as identified by the Administrator, for any of the properties identified in subparagraphs (A) through (D) of such paragraph, the Administrator shall, not later than 3 months after making such a determination, make such recommendations as the Administrator considers appropriate to improve affordability to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

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MINORITY VIEWS

H.R. 2565 would require the Federal Emergency Management Agency (FEMA) to study and then immediately implement a change in the way flood insurance rates are calculated. Currently, FEMA uses a national average replacement value when setting rates. H.R. 2565 would require FEMA to instead use the specific replacement value of the property to be insured. While this would result in more precise rates for the specific property, it could result in higher premiums for certain properties across the country.

The use of a national average means that, in general, policyholders with properties below the average value may be overpaying for flood insurance, while policyholders with properties above the average value may be underpaying for flood insurance. This is an issue that should be further studied.

However, Congress should have the opportunity to review the results of the study to better determine exactly what the impacts will be if this change were enacted. At this time, it is unclear what the “pivot point” at which premiums would be affected, and it is equally unclear how fast or by how much premiums would rise or fall as a result of this change.

Given the broader affordability challenges associated with flood insurance premiums, we must be cautious in calling for changes that could have unintended consequences on flood insurance costs. If flood insurance becomes widely unaffordable, this could have devastating consequences on the housing market as policyholders lose the ability to purchase coverage, and are left unprotected in the event of a flood.

For these reasons, we oppose H.R. 2565.

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