

TAXPAYER EXPOSURE MITIGATION ACT OF 2017

—————  
JULY 25, 2017.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

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. 2246]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2246) to repeal the mandatory flood insurance coverage requirement for commercial properties located in flood hazard areas and to provide for greater transfer of risk under the National Flood Insurance Program to private capital and reinsurance markets, 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. SHORT TITLE.**

This Act may be cited as the “Taxpayer Exposure Mitigation Act of 2017”.

**SEC. 2. OPT-OUT OF MANDATORY COVERAGE REQUIREMENT FOR COMMERCIAL PROPERTIES.**

(a) AMENDMENTS TO FLOOD DISASTER PROTECTION ACT OF 1973.—The Flood Disaster Protection Act of 1973 is amended—

(1) in section 3(a) (42 U.S.C. 4003(a))—

(A) in paragraph (10), by striking “and” at the end;

(B) in paragraph (11), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(12) ‘residential improved real estate’ means improved real estate that—

“(A) is primarily used for residential purposes, as defined by the Federal entities for lending regulation; and

- “(B) secures financing or financial assistance provided through a federally related single family loan program, as defined by the Federal entities for lending regulation.”; and
- (2) in section 102 (42 U.S.C. 4012a)—
- (A) in subsection (b)—
- (i) in paragraph (1)(A)—
- (I) by inserting “residential” before “improved real estate”; and
- (II) by inserting “residential” before “building or mobile home”;
- (ii) in paragraph (2)—
- (I) by inserting “residential” before “improved real estate”; and
- (II) by inserting “residential” before “building or mobile home”;
- and
- (iii) in paragraph (3)—
- (I) in subparagraph (A), by inserting “residential” before “improved real estate”; and
- (II) in the matter after and below subparagraph (B), by inserting “residential” before “building or mobile home”;
- (B) in subsection (c)(3), by striking “, in the case of any residential property, for any structure that is a part of such property” and inserting “for any structure that is part of a residential property”;
- (C) in subsection (e)—
- (i) in paragraph (1)—
- (I) by inserting “residential” before “improved real estate”; and
- (II) by inserting “residential” before “building or mobile home” each place such term appears; and
- (ii) in paragraph (5)—
- (I) in subparagraph (A)—
- (aa) by inserting “residential” before “improved real estate” each place such term appears; and
- (bb) by inserting “residential” before “building or mobile home” each place such term appears;
- (II) in subparagraph (B), by inserting “residential” before “building or mobile home” each place such term appears; and
- (III) in subparagraph (C), by inserting “residential” before “building or mobile home”; and
- (D) in subsection (h)—
- (i) by inserting “residential” before “improved real estate” each place such term appears; and
- (ii) in the matter preceding paragraph (1), by inserting “residential” before “building or mobile home”.
- (b) AMENDMENTS TO NATIONAL FLOOD INSURANCE ACT OF 1968.—The National Flood Insurance Act of 1968 is amended—
- (1) in section 1364(a) (42 U.S.C. 4104a(a))—
- (A) in paragraph (1), by inserting “residential” before “improved real estate”;
- (B) in paragraph (2), by inserting “residential” before “improved real estate”; and
- (C) in paragraph (3)(A), by inserting “residential” before “building”;
- (2) in section 1365 (42 U.S.C. 4104b)—
- (A) in subsection (a)—
- (i) by inserting “residential” before “improved real estate”; and
- (ii) by inserting “residential” before “building”;
- (B) in subsection (b)(2)—
- (i) by inserting “residential” before “building” each place such term appears; and
- (ii) by inserting “residential” before “improved real estate” each place such term appears;
- (C) in subsection (d), by inserting “residential” before “improved real estate” each place such term appears; and
- (D) in subsection (e)—
- (i) by inserting “residential” before “improved real estate”; and
- (ii) by inserting “residential” before “building” each place such term appears; and
- (3) in section 1370 (42 U.S.C. 4121)—
- (A) in paragraph (8), by inserting “residential” before “improved real estate”;
- (B) by redesignating paragraphs (14) and (15) as paragraphs (15) and (16), respectively; and
- (C) by inserting after paragraph (13) the following new paragraph:

“(14) the term ‘residential improved real estate’ means improved real estate that—

“(A) is primarily used for residential purposes, as defined by the Federal entities for lending regulation; and

“(B) secures financing or financial assistance provided through a federally related single family loan program, as defined by the Federal entities for lending regulation;”.

(c) **RULE OF CONSTRUCTION.**—This section and the amendments made by this section may not be construed to prohibit the Administrator of the Federal Emergency Management Agency from offering flood insurance coverage under the National Flood Insurance Program for eligible non-residential properties, other residential multifamily properties, or structures financed with commercial loans, or to prohibit the purchase of such coverage for such eligible properties.

**SEC. 3. RISK TRANSFER REQUIREMENT.**

Subsection (e) of section 1345 of the National Flood Insurance Act of 1968 (42 U.S.C. 4081(e)) is amended—

(1) by striking “(e) RISK TRANSFER.—The Administrator” and inserting the following:

“(e) **RISK TRANSFER.**—

“(1) **AUTHORITY.**—The Administrator”; and

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

“(2) **REQUIRED RISK TRANSFER COVERAGE.**—

“(A) **REQUIREMENT.**—Not later than the expiration of the 18-month period beginning upon the date of the enactment of this paragraph and at all times thereafter, the Administrator shall annually cede a portion of the risk of the flood insurance program under this title to the private reinsurance or capital markets, or any combination thereof, and at rates and terms that the Administrator determines to be reasonable and appropriate, in an amount that—

“(i) is sufficient to maintain the ability of the program to pay claims; and

“(ii) manages and limits the annual exposure of the flood insurance program to flood losses in accordance with the probable maximum loss target established for such year under subparagraph (B).

“(B) **PROBABLE MAXIMUM LOSS TARGET.**—The Administrator shall for each fiscal year, establish a probable maximum loss target for the national flood insurance program that shall be the maximum probable loss under the national flood insurance program that is expected to occur in such fiscal year.

“(C) **CONSIDERATIONS.**—In establishing the probable maximum loss target under subparagraph (B) for each fiscal year and carrying out subparagraph (A), the Administrator shall consider—

“(i) the probable maximum loss targets for other United States public natural catastrophe insurance programs, including as State wind pools and earthquake programs;

“(ii) the probable maximum loss targets of other risk management organizations, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

“(iii) catastrophic, actuarial, and other appropriate data modeling results of the national flood insurance program portfolio;

“(iv) the availability of funds in the National Flood Insurance Fund established under section 1310 (42 U.S.C. 4017);

“(v) the availability of funds in the National Flood Insurance Reserve Fund established under section 1310A (42 U.S.C. 4017a);

“(vi) the availability of borrowing authority under section 1309 (42 U.S.C. 4016);

“(vii) the ability of the Administrator to repay outstanding debt;

“(viii) amounts appropriated to the Administrator to carry out the national flood insurance program;

“(ix) reinsurance, capital markets, catastrophe bonds, collateralized reinsurance, resilience bonds, and other insurance-linked securities, and other risk transfer opportunities; and

“(x) any other factor the Administrator determines appropriate.

“(D) **MULTI-YEAR CONTRACTS.**—Nothing in this paragraph may be construed to prevent or prohibit the Administrator from complying with the requirement under subparagraph (A) regarding ceding risk through contracts having a duration longer than one year.”.

**SEC. 4. COMMUNITY FLOOD MAPS.**

(a) TECHNICAL MAPPING ADVISORY COUNCIL.—Section 100215 of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4101a) is amended—

(1) in subsection (c)—

- (A) in paragraph (5)(B), by striking “and” at the end;
- (B) by redesignating paragraph (6) as paragraph (9); and
- (C) by inserting after paragraph (5) the following new paragraphs:

“(6) recommend to the Administrator methods or actions to make the flood mapping processes more efficient;

“(7) recommend to the Administrator methods or actions to minimize any cost, data, and paperwork requirements of the flood mapping processes;

“(8) assist communities, and in particular smaller communities, in locating the resources required to participate in the development of flood elevations and flood hazard area designations; and”;

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

“(m) COMMUNITY FLOOD MAPS.—

“(1) STANDARDS AND PROCEDURES.—In addition to the other duties of the Council under this section, not later than the expiration of the 12-month period beginning on the date of the enactment of this subsection, the Council shall recommend to the Administrator standards and requirements for chief executive officers, or entities designated by chief executive officers, of States and communities participating in the National Flood Insurance Program to use in mapping flood hazards located in States and communities that choose to develop alternative maps to the flood insurance rate maps developed by the Agency. The recommended standards and requirements shall include procedures for providing notification and appeal rights to individuals within the communities of the proposed flood elevation determinations.

“(2) EXEMPTION FROM RULEMAKING.—Until such time as the Administrator promulgates regulations implementing paragraph (1) of this subsection, the Administrator may, notwithstanding any other provision of law, adopt policies and procedures necessary to implement such paragraphs without undergoing notice and comment rulemaking and without conducting regulatory analyses otherwise required by statute, regulation, or executive order.”

(b) FEMA IDENTIFICATION OF FLOOD-PRONE AREAS.—Subsection (a) of section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(a)) is amended—

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

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A), and (B), respectively, and realigning such subparagraphs so as to be indented 4 ems from the left margin;

(3) by striking “is authorized to consult” and inserting the following: “is authorized—

“(1) to consult”;

(4) by adding at the end the following new paragraph:

“(2) to receive proposed alternative maps from communities developed pursuant to standards and requirements recommended by the Technical Mapping Advisory Council, as required by section 100215(m) of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4101a(m)) and adopted by the Administrator as required by section 100216(c)(3) of such Act (42 U.S.C. 4101b(c)(3)), so that the Administrator may—

“(A) publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, and

“(B) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates of probable flood caused loss for the various flood risk zones for each of these areas until the date specified in section 1319.”

(c) NATIONAL FLOOD MAPPING PROGRAM.—Section 100216 of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4101b) is amended—

(1) in subsection (a), by inserting “prepared by the Administrator, or by a community pursuant to section 1360(a)(2) of the National Flood Insurance Act of 1968,” after “Program rate maps”;

(2) in subsection (c)—

(A) in paragraph (1)(B), by striking “and” at the end;

(B) in paragraph (2)(C), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

“(3) establish and adopt standards and requirements for development by States and communities of alternative flood insurance rate maps to be submitted to the Administrator pursuant to section 1360(a)(2) of the National Flood

Insurance Act of 1968, taking into consideration the recommendations of the Technical Mapping Advisory Council made pursuant to section 100215(m) of this Act (42 U.S.C. 4101a(m)); and

“(4) in the case of proposed alternative maps received by the Administrator pursuant to such section 1360(a)(2), not later than the expiration of the 6-month period beginning upon receipt of such proposed alternative maps—

“(A) determine whether such maps were developed in accordance with the standards and requirements adopted pursuant to paragraph (3) of this subsection; and

“(B) approve or disapprove such proposed maps for use under National Flood Insurance Program.”; and

(3) in subsection (d)(1), by inserting “maximum” before “30-day period” each place such term appears in subparagraphs (B) and (C).

#### PURPOSE AND SUMMARY

Introduced on April 28, 2017, by Representative Blaine Luetkemeyer, H.R. 2246, the “Taxpayer Exposure Mitigation Act of 2017”, amends the Flood Disaster Protection Act of 1973 to repeal the mandatory flood insurance coverage requirement for commercial properties located in flood hazard areas and to provide for greater transfer of risk under the National Flood Insurance Program to private capital and reinsurance markets, and for other purposes.

#### 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. 2246 addresses concerns that the NFIP’s fiscal condition is unsustainable and recognizes that further reforms are needed to optimize efficiency and instill market discipline. H.R. 2246 would require the FEMA Administrator to annually cede a portion of the NFIP’s risk to the private reinsurance or capital markets in an amount determined by the Administrator that is sufficient to maintain the program’s ability to pay claims, and limit exposure to flood loss. H.R. 2246 would also provide the FEMA Administrator the ability to enter into multi-year contracts for risk transfers.

Historically, the NFIP had been limited to using flood insurance premiums, available surplus, borrowing capacity from the U.S. Treasury, and direct appropriations from Congress to pay claims. In 2012, the Biggert-Waters Flood Insurance Reform Act clarified FEMA’s authority to secure reinsurance from the private reinsurance and capital markets. In fact, in January 2017, FEMA, in an attempt to understand the reinsurance market, acquired approximately \$1 billion in reinsurance coverage to insure against 26 percent of losses between \$4 billion and \$8 billion. H.R. 2246 provides more clarity and guidance on how and when FEMA would provide for risk transfers that maximize FEMA’s resources and protect taxpayers from catastrophic losses. H.R. 2246 would permit several types of risk transfers, including traditional reinsurance, catas-

trophe bonds, collateralized reinsurance, resilience bonds, insurance-linked securities and other types of risk transfers that may be created in the future.

In recognition of the inefficiencies of the NFIP in the commercial and multifamily properties, H.R. 2246 would eliminate the mandatory purchase requirement for commercial and multifamily properties, while preserving the eligibility of such properties to voluntarily purchase NFIP coverage if they so choose. Today, commercial and multifamily properties, oftentimes valued many times over the maximum \$500,000 NFIP coverage amount, are forced to purchase both NFIP and excess coverage. H.R. 2246 would rationalize the flood insurance market for commercial and multifamily properties by deferring to the lender to determine whether the loan's collateral will be required to be covered by flood insurance. This rationalization would save costs for commercial and multifamily properties by shedding NFIP regulatory requirements that are inconsistent with insurance market practices.

H.R. 2246, however, would ensure that commercial and multifamily properties have access to flood insurance by making it permissive for these properties to purchase NFIP policies. As a result, commercial and multifamily properties can opt for policies that better fit their coverage requirements such as purchasing umbrella policies for a group of properties.

In recognition of the challenges that plagued the development of timely flood rate risk maps, H.R. 2246 authorizes alternative community flood maps, developed and financed by local governments. Today, FEMA is required to review each community, once every five years, to determine whether re-mapping is necessary. In some cases, however, remapping does not occur for over 10 years, thereby leaving the community subjected to outdated maps. H.R. 2246 would require the Technical Mapping Advisory Council (TMAC) to develop and make recommendations to the FEMA Administrator to establish a set of standards, guidelines, and procedures for State and local governments to develop alternative maps to the NFIP's rate maps.

Subject to certification and approval by the FEMA Administrator, these community maps would be the flood insurance rate map for the purposes of the NFIP, with respect to the area covered on the map. Community maps would be an avenue for those communities, who desire re-mapping of their areas on a more frequent basis or elect to use their local resources to use updated technology, often not available to FEMA, to produce community maps that provide more detailed data than provided by the agency.

#### HEARINGS

The Committee on Financial Services' Subcommittee on Housing & Insurance held two hearings examining matters relating to H.R. 2246 on March 9, 2017 and March 16, 2017. The Committee on Financial Services held a hearing examining matters relating to H.R. 2246 on June 7, 2017.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 21, 2017 to consider H.R. 2246. The Committee ordered H.R.

2246 to be reported favorably to the House, as amended, by a recorded vote of 36 ayes to 24 nays (Recorded vote no. FC-67), 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. An amendment offered by Mr. Luetkemeyer was agreed to by voice vote. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House, as amended. The motion was agreed to by a recorded vote of 36 ayes to 24 nays (Recorded vote no. FC-67), 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. PITENGER	✓	
	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

115<sup>th</sup> Congress

DATE: 6/21/17

Measure HR 2246

Amendment No. MTA

Offered by: \_\_\_\_\_

Agreed To	Yes	No	Wdrn
	✓		

Voice Vote	Yeas	Nays	Prsnt
	36	24	

Record vote no. FC-67

*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. 2246 will benefit taxpayers and policyholders by repealing the mandatory flood insurance coverage requirement for commercial properties located in flood hazard areas and providing for greater transfer of risk under the National Flood Insurance Program to private capital and reinsurance markets.

## 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 24, 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. 2246, the Taxpayer Exposure Mitigation Act of 2017.

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, Director).

Enclosure.

*H.R. 2246—Taxpayer Exposure Mitigation Act of 2017*

Summary: H.R. 2246 would eliminate the requirement for commercial properties in flood zones to have flood insurance if the properties are financed by a federally regulated lending institution, or a federal lender. The bill also would require the Federal Emergency Management Agency (FEMA) to acquire coverage for a portion of the National Flood Insurance Program’s (NFIP) potential cost from the private reinsurance or capital markets annually. Finally, H.R. 2246 would require FEMA to permit localities to develop and submit their own maps of local flood risks for FEMA’s review and approval for use in determining NFIP insurance rates.

The cost to enact H.R. 2246 is uncertain and would depend on the number of commercial properties that drop NFIP coverage. CBO estimates that enacting H.R. 2246 would increase direct spending by \$325 million over the 2018–2027 period, although costs could be significantly higher or lower. CBO also estimates that implementing the bill would cost \$40 million over the 2018–2022 period, assuming appropriation of the necessary amounts.

Because enacting H.R. 2246 would affect direct spending, pay-as-you-go procedures apply. Enacting the legislation would not affect revenues.

CBO estimates that enacting H.R. 2246 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 2246 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2246 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	2023	2024	2025	2026	2027	2017– 2022	2017– 2027
INCREASES IN DIRECT SPENDING													
Estimated Budget Authority .....	0	5	5	15	30	40	40	45	45	50	50	95	325
Estimated Outlays ....	0	5	5	15	30	40	40	45	45	50	50	95	325
INCREASES IN SPENDING SUBJECT TO APPROPRIATION													
Estimated Authorization Level .....	0	1	10	10	10	10	10	10	10	10	10	41	91
Estimated Outlays ....	0	1	9	10	10	10	10	10	10	10	10	40	90

Basis of estimate: For this estimate, CBO assumes that H.R. 2246 will be enacted near the end of fiscal year 2017 and that the necessary amounts will be appropriated for each fiscal year.

*Background*

Under current law, residential and commercial property owners can choose to buy flood insurance through the NFIP. Property owners who buy coverage through the NFIP pay annual premiums which are deposited into the National Flood Insurance Fund (NFIF) and are used to pay flood damage claims submitted by policyholders.

**Mandatory Purchase Requirement.** Owners of properties that are located within an area designated as having at least a 1 percent chance of being flooded in any year (known as a Special Flood Hazard Area, or SFHA) and that are financed by a federally regulated lending institution, government sponsored enterprise for housing, or federal lender are required to carry flood insurance. Property owners not receiving financing from those entities or located outside an SFHA may purchase flood insurance coverage from a private carrier or the NFIP at their discretion. The level of compliance with this requirement is unknown.

Currently, there are about 5 million properties insured by the NFIP. Of those properties, about 340,000 (or 6.7 percent) are commercial properties, CBO estimates. How many of those properties are subject to the mandatory purchase requirement is unknown because the properties' lending institutions are required to enforce the requirement and aggregate data on properties subject to that requirement do not exist.

**Premiums.** Most properties, about 80 percent, are charged a premium based on FEMA's estimate of the expected cost to insure those properties against damages caused by flooding, what CBO calls actuarial premiums. The remaining 20 percent of NFIP insured properties are charged premiums that are lower than the expected cost of flood damage, what CBO calls subsidized premiums. In 2016, collections from actuarial and subsidized premiums totaled about \$3.5 billion. In 2017, the average NFIP premium for commercial properties is about \$2,400.

**Additional Collections.** All NFIP policyholders also pay a Reserve Fund Assessment (RFA) equal to 15 percent of their premium and a surcharge equal to \$25 for policies that cover primary residences and \$250 for policies that cover nonprimary residences or commercial properties. Both the RFA and surcharge are deposited into the NFIP Reserve Fund and are available to pay policyholder claims if amounts in the NFIP are insufficient. In 2016, a total of \$919 million was deposited into the Reserve Fund. In 2017, the average RFA and surcharge was about \$600 for commercial properties.

**Reinsurance.** The NFIP is also authorized to purchase reinsurance from private reinsurance or capital markets. Reinsurance is a mechanism by which a primary insurer, like the NFIP, can guard against catastrophic losses by paying a premium to one or multiple private entities that then assume the liability to pay certain claims at an agreed upon level of losses. In 2017, the NFIP purchased about \$1 billion of reinsurance for a single flood with insurable claims between \$4 billion and \$8 billion. The NFIP paid a premium of \$150 million for that reinsurance and the coverage will last through January 1, 2018.

#### *Direct spending*

The bill would eliminate the requirement to buy flood insurance for commercial properties located in an SFHA and would require FEMA to purchase reinsurance in the private market.

**Commercial Property.** Using a database of NFIP policy information, CBO estimates that in 2017 there are approximately 230,000 commercial structures in SFHAs with NFIP policies, of which 40 percent pay subsidized premiums. FEMA does not track which NFIP insured properties are subject to that mandatory purchase

requirement, but CBO expects the majority (about 75 percent) of those properties have a loan from a federally regulated lending institution. Thus, CBO estimates that in 2017 approximately 170,000 commercial properties are subject to the requirement to purchase flood insurance.

In 2014, the Government Accountability Office (GAO) reported that many property owners do not recognize the potential damage that may be caused to their property by a flood and underestimate the risk of a flood to their property.<sup>1</sup> While CBO cannot determine how many commercial properties subject to the mandatory purchase requirement have NFIP coverage solely because they are required to, we expect that many such property owners underestimate their flood risk. Owners of commercial property face NFIP premiums and fees that average about \$3,000 per year. CBO expects that within a few years about half of the owners of commercial properties currently subject to the mandatory purchase requirement would discontinue buying flood insurance under H.R. 2246. CBO is unaware of any empirical information about the propensity of individuals to drop mandated insurance requirements when given the opportunity. However, because many property owners underestimate the risks they face from flooding, CBO expects that a significant number of commercial policyholders would gradually drop coverage if they were not required to have it.

Based on an analysis of information provided by FEMA on the premiums, surcharges, other assessments paid by commercial property owners, and the expected cost to insure them, CBO estimates that enacting this provision would increase net direct spending by \$325 million over the 2018–2027 period from the loss of RFA and surcharge collections from commercial properties that would have been paying actuarial premiums. That decrease in collections would be partially offset by fewer claims resulting from fewer policyholders. Subsidized policy holders that elected to drop NFIP coverage would reduce net spending because the expected cost of those policies is greater than the premiums paid for the coverage.

CBO's estimated costs are uncertain and costs could be significantly greater or smaller than we have estimated. CBO is confident that some commercial property policyholders would drop NFIP coverage under H.R. 2246 at a net cost to the program. However, without basic information about which policyholders are required to maintain coverage, this estimate has a wide range of uncertainty.

Reinsurance. Section 3 of H.R. 2246 would require the NFIP to transfer a portion of the program's risk to private reinsurance or capital markets at least once per year in a manner that would ensure that enough funds are in the NFIP to cover claims in a typical year. Under current law, FEMA plans to purchase additional reinsurance for the NFIP after the expiration of the current coverage in 2018. Because FEMA intends to continue purchasing reinsurance in future years, CBO estimates that enacting this provision would have no significant effect the amount of reinsurance coverage the agency buys or on NFIP spending.

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<sup>1</sup> See Government Accountability Office, Overview of GAO's Past Work on the National Flood Insurance Programs (May 2014).

*Spending subject to appropriation*

Section 4 of H.R. 2246 would direct FEMA to create standards and requirements for states and localities that choose to develop alternative maps to the Flood Insurance Rate Maps created by FEMA. The section also would require FEMA to determine within six months of receiving any proposed alternative maps from states or localities whether to approve such maps for NFIP rate setting purposes.

Based on an analysis of information provided by FEMA, CBO estimates that implementing this section would cost \$1 million in 2018 to establish administrative procedures to review and approve community flood maps and \$10 million each year thereafter to review, analyze, and make a determination on community flood maps that would be submitted by local jurisdictions around the country. Such spending would be subject to appropriation. In 2017, \$178 million was appropriated for FEMA’s flood mapping and related activities.

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. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2246, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON JUNE 21, 2017

	By fiscal year, in millions of dollars—													2017–2022	2017–2027
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027				
	NET INCREASE IN THE DEFICIT														
Statutory Pay-As-You-Go Impact .....	0	5	5	15	30	40	40	45	45	50	50	95	325		

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 2246 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2028.

Intergovernmental and private-sector impact: H.R. 2246 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on 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. 2246 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. 2246 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. 2246 contains no directed rulemaking.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Sec. 1. Short title*

This Act may be cited as the “Taxpayer Exposure Mitigation Act of 2017”.

*Sec. 2. Opt-out of mandatory coverage requirement for commercial properties*

Amends the Flood Disaster Protection Act of 1973 and the National Flood Insurance Act of 1968 to eliminate the NFIP’s mandatory purchase requirement for all commercial and multifamily properties, while preserving the eligibility of commercial and multifamily properties to voluntarily purchase NFIP coverage if they so choose. Residential properties financed by commercial loans would be treated similar to other commercial and multifamily properties.

*Sec. 3. Risk transfer requirement*

No later than 18 months after bill enactment, the FEMA Administrator shall annually cede a portion of the risk of the NFIP to the private reinsurance or capital markets, as determined by the Administrator, in an amount that (i) is sufficient to maintain the ability of the program to pay claims; and (ii) manages and limits the annual exposure of the NFIP to flood losses in accordance with the probably maximum loss target established each such year. The Ad-

ministrator shall establish the probable maximum loss target for the NFIP that is expected to occur such fiscal year. In establishing the probably maximum loss target, the Administrator shall consider—(i) the probable maximum loss targets for other U.S. public natural catastrophe insurance program, including State wind pools and earthquake programs; (ii) the probably maximum loss targets of other risk management organization, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; (iii) catastrophic, actuarial, and other appropriate data modeling results of the NFIP portfolio; (iv) the availability of funds in the National Flood Insurance Fund; (v) the availability of funds in the National Flood Insurance Reserve Fund; (vi) the availability of NFIP borrowing authority; (vii) the ability of the Administrator to repay outstanding debt; (viii) amounts appropriated to the Administrator to carry out the NFIP; (ix) reinsurance, capital markets, catastrophe bonds, collateralized reinsurance, resilience bonds, and other insurance-linked securities, and other risk transfer opportunities; and (x) any other factor the Administrator determines appropriate.

Gives the Administrator the ability to enter into multi-year contracts for reinsurance.

*Sec. 4. Private or community flood maps*

Twelve months after bill enactment, the Technical Mapping Advisory Council (TMAC) shall develop and make recommendations to the FEMA Administrator to establish a set of standards, guidelines, and procedures for state and local governments to develop alternative maps. Subject to certification and approval by the Administrator, the map shall be considered the flood insurance rate map in effect for all purposes of the NFIP, with respect to the area covered by the map.

Until the Administrator promulgates regulations implementing this section, the Administrator may adopt policies and procedures necessary to implement this section without undergoing notice and comment rulemaking.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**FLOOD DISASTER PROTECTION ACT OF 1973**

\* \* \* \* \*

DEFINITIONS

SEC. 3. (a) As used in this Act, unless the context otherwise requires, the term—

- (1) “community” means a State or a political subdivision thereof which has zoning and building code jurisdiction over a particular area having special flood hazards;



(2) “Federal agency” means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(3) “financial assistance” means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States;

(4) “financial assistance for acquisition or construction purposes” means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief and Emergency Assistance Act (other than assistance under such Act in connection with a flood);

(5) “Federal entity for lending regulation” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

(6) “Administrator” means the Administrator of the Federal Emergency Management Agency;

(7) “Federal agency lender” means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

(8) the term “improved real estate” means real estate upon which a building is located;

(9) “lender” means a regulated lending institution or Federal agency lender;

(10) “regulated lending institution” means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation; **[and]**

(11) “servicer” means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan<sup>[.]</sup>; and

(12) “residential improved real estate” means improved real estate that—

(A) is primarily used for residential purposes, as defined by the Federal entities for lending regulation; and

*(B) secures financing or financial assistance provided through a federally related single family loan program, as defined by the Federal entities for lending regulation.*

(b) The Administrator is authorized to define or redefine, by rules and regulations, any scientific or technical term used in this Act, insofar as such definition is not inconsistent with the purposes of this Act.

#### TITLE I—EXPANSION OF NATIONAL FLOOD INSURANCE PROGRAM

\* \* \* \* \*

##### FLOOD INSURANCE PURCHASE AND COMPLIANCE REQUIREMENTS AND ESCROW ACCOUNTS

SEC. 102. (a) After the expiration of sixty days following the date of enactment of this Act, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Administrator as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: *Provided*, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

(b) REQUIREMENT FOR MORTGAGE LOANS.—

(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated lending institutions—

(A) not to make, increase, extend, or renew any loan secured by *residential* improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the *residential* building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in an amount at least equal to the outstanding principal balance of the loan or the maximum limit of coverage made available under the Act with respect to the particular type of property, whichever is less; and

(B) to accept private flood insurance as satisfaction of the flood insurance coverage requirement under subparagraph (A) if the coverage provided by such private flood insurance meets the requirements for coverage under such subparagraph.

(2) FEDERAL AGENCY LENDERS.—A Federal agency lender may not make, increase, extend, or renew any loan secured by *residential* improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the *residential* building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1)(A). Each Federal agency lender shall accept private flood insurance as satisfaction of the flood insurance coverage requirement under the preceding sentence if the flood insurance coverage provided by such private flood insurance meets the requirements for coverage under such sentence. Each Federal agency lender shall issue any regulations necessary to carry out this paragraph. Such regulations shall be consistent with and substantially identical to the regulations issued under paragraph (1)(A).

(3) GOVERNMENT-SPONSORED ENTERPRISES FOR HOUSING.—The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall implement procedures reasonably designed to ensure that, for any loan that is—

(A) secured by *residential* improved real estate or a mobile home located in an area that has been identified, at the time of the origination of the loan or at any time during the term of the loan, by the Administrator as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, and

(B) purchased by such entity, the *residential* building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1)(A). The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall accept private flood insurance as satisfaction of the flood insurance coverage requirement under paragraph (1)(A) if the flood insurance coverage provided by such private flood insurance meets the requirements for coverage under such paragraph and any requirements established by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, respectively, relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation will accept private flood insurance.

(4) APPLICABILITY.—

(A) EXISTING COVERAGE.—Except as provided in subparagraph (B), paragraph (1) shall apply on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(B) NEW COVERAGE.—Paragraphs (2) and (3) shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994. Paragraph (1) shall apply with respect to any loan made, increased, extended, or renewed by any lender supervised by the Farm Credit Administration only after the expiration of the period under this subparagraph.

(C) CONTINUED EFFECT OF REGULATIONS.—Notwithstanding any other provision of this subsection, the regulations to carry out paragraph (1), as in effect immediately before the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, shall continue to apply until the regulations issued to carry out paragraph (1) as amended by section 522(a) of such Act take effect.

(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to supersede or limit the authority of a Federal entity for lending regulation, the Federal Housing Finance Agency, a Federal agency lender, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which the entity or agency will accept private flood insurance.

(6) NOTICE.—

(A) IN GENERAL.—Each lender shall disclose to a borrower that is subject to this subsection that—

(i) flood insurance is available from private insurance companies that issue standard flood insurance policies on behalf of the national flood insurance program or directly from the national flood insurance program;

(ii) flood insurance that provides the same level of coverage as a standard flood insurance policy under the national flood insurance program may be available from a private insurance company that issues policies on behalf of the company; and

(iii) the borrower is encouraged to compare the flood insurance coverage, deductibles, exclusions, conditions and premiums associated with flood insurance policies issued on behalf of the national flood insurance program and policies issued on behalf of private insurance companies and to direct inquiries regarding the availability, cost, and comparisons of flood insurance coverage to an insurance agent.

(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting or otherwise limiting the authority of a Federal entity for lending regulation to approve any disclosure made by a regulated lending institution for purposes of complying with subparagraph (A).

(7) PRIVATE FLOOD INSURANCE DEFINED.—In this subsection, the term “private flood insurance” means an insurance policy that—

- (A) is issued by an insurance company that is—
- (i) licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or
  - (ii) in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located;
- (B) provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the national flood insurance program, including when considering deductibles, exclusions, and conditions offered by the insurer;
- (C) includes—
- (i) a requirement for the insurer to give 45 days' written notice of cancellation or non-renewal of flood insurance coverage to—
    - (I) the insured; and
    - (II) the regulated lending institution or Federal agency lender;
  - (ii) information about the availability of flood insurance coverage under the national flood insurance program;
  - (iii) a mortgage interest clause similar to the clause contained in a standard flood insurance policy under the national flood insurance program; and
  - (iv) a provision requiring an insured to file suit not later than 1 year after date of a written denial of all or part of a claim under the policy; and
- (D) contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the national flood insurance program.
- (c) EXCEPTIONS TO PURCHASE REQUIREMENTS.—
- (1) STATE-OWNED PROPERTY.—Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Administrator. The Administrator shall publish and periodically revise the list of States to which this subsection applies.
- (2) SMALL LOANS.—Notwithstanding any other provision of this section, subsections (a) and (b) shall not apply to any loan having—
- (A) an original outstanding principal balance of \$5,000 or less; and
  - (B) a repayment term of 1 year or less.
- (3) DETACHED STRUCTURES.—Notwithstanding any other provision of this section, flood insurance shall not be required, in the case of any residential property, for any structure that is a part of such property for any structure that is part of a residential property but is detached from the primary residential structure of such property and does not serve as a residence.
- (d) ESCROW OF FLOOD INSURANCE PAYMENTS.—

## (1) REGULATED LENDING INSTITUTIONS.—

(A) FEDERAL ENTITIES RESPONSIBLE FOR LENDING REGULATIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Federal Financial Institutions Examination Council) shall, by regulation, direct that all premiums and fees for flood insurance under the National Flood Insurance Act of 1968, for residential improved real estate or a mobile home, shall be paid to the regulated lending institution or servicer for any loan secured by the residential improved real estate or mobile home, with the same frequency as payments on the loan are made, for the duration of the loan. Except as provided in subparagraph (B), upon receipt of any premiums or fees, the regulated lending institution or servicer shall deposit such premiums and fees in an escrow account on behalf of the borrower. Upon receipt of a notice from the Administrator or the provider of the flood insurance that insurance premiums are due, the premiums deposited in the escrow account shall be paid to the provider of the flood insurance.

(B) LIMITATION.—Except as may be required under applicable State law, a Federal entity for lending regulation may not direct or require a regulated lending institution to deposit premiums or fees for flood insurance under the National Flood Insurance Act of 1968 in an escrow account on behalf of a borrower under subparagraph (A)—

(i) if—

(I) the regulated lending institution has total assets of less than \$1,000,000,000; and

(II) on or before the date of enactment of the Biggert-Waters Flood Insurance Reform Act of 2012, the regulated lending institution—

(aa) in the case of a loan secured by residential improved real estate or a mobile home, was not required under Federal or State law to deposit taxes, insurance premiums, fees, or any other charges in an escrow account for the entire term of the loan; and

(bb) did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees, or any other charges in an escrow account for loans secured by residential improved real estate or a mobile home; or

(ii) in the case of a loan that—

(I) is in a junior or subordinate position to a senior lien secured by the same residential improved real estate or mobile home for which flood insurance is being provided at the time of the origination of the loan;

(II) is secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development,

if the residential improved real estate or mobile home is covered by a flood insurance policy that—

(aa) meets the requirements that the regulated lending institution is required to enforce under subsection (b)(1);

(bb) is provided by the condominium association, cooperative, homeowners association, or other applicable group; and

(cc) the premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;

(III) is secured by residential improved real estate or a mobile home that is used as collateral for a business purpose;

(IV) is a home equity line of credit;

(V) is a nonperforming loan; or

(VI) has a term of not longer than 12 months.

(2) FEDERAL AGENCY LENDERS.—Each Federal agency lender shall by regulation require and provide for escrow and payment of any flood insurance premiums and fees relating to residential improved real estate and mobile homes securing loans made by the Federal agency lender under the circumstances and in the manner provided under paragraph (1). Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) APPLICABILITY OF RESPA.—Escrow accounts established pursuant to this subsection shall be subject to the provisions of section 10 of the Real Estate Settlement Procedures Act of 1974.

(4) DEFINITION.—For purposes of this subsection, the term “residential improved real estate” means improved real estate for which the improvement is a residential building.

(5) APPLICABILITY.—This subsection shall apply only with respect to any loan made, increased, extended, or renewed after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(e) PLACEMENT OF FLOOD INSURANCE BY LENDER.—

(1) NOTIFICATION TO BORROWER OF LACK OF COVERAGE.—If, at the time of origination or at any time during the term of a loan secured by *residential* improved real estate or by a mobile home located in an area that has been identified by the Administrator (at the time of the origination of the loan or at any time during the term of the loan) as an area having special flood hazards and in which flood insurance is available under the National Flood Insurance Act of 1968, the lender or servicer for the loan determines that the *residential* building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by such insurance in an amount less than the amount required for the property pursuant to paragraph (1), (2), or (3) of subsection (b), the lender or servicer shall notify the borrower under the loan that the borrower should obtain, at the borrower’s expense, an

amount of flood insurance for the *residential* building or mobile home and such personal property that is not less than the amount under subsection (b)(1), for the term of the loan.

(2) PURCHASE OF COVERAGE ON BEHALF OF BORROWER.—If the borrower fails to purchase such flood insurance within 45 days after notification under paragraph (1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of premiums and fees incurred by the lender or servicer for the loan in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 30 days of receipt by the lender or servicer of a confirmation of a borrower's existing flood insurance coverage, the lender or servicer shall—

(A) terminate any insurance purchased by the lender or servicer under paragraph (2); and

(B) refund to the borrower all premiums paid by the borrower for any insurance purchased by the lender or servicer under paragraph (2) during any period during which the borrower's flood insurance coverage and the insurance coverage purchased by the lender or servicer were each in effect, and any related fees charged to the borrower with respect to the insurance purchased by the lender or servicer during such period.

(4) SUFFICIENCY OF DEMONSTRATION.—For purposes of confirming a borrower's existing flood insurance coverage, a lender or servicer for a loan shall accept from the borrower an insurance policy declarations page that includes the existing flood insurance policy number and the identity of, and contact information for, the insurance company or agent.

(5) REVIEW OF DETERMINATION REGARDING REQUIRED PURCHASE.—

(A) IN GENERAL.—The borrower and lender for a loan secured by *residential* improved real estate or a mobile home may jointly request the Administrator to review a determination of whether the *residential* building or mobile home is located in an area having special flood hazards. Such request shall be supported by technical information relating to the *residential* improved real estate or mobile home. Not later than 45 days after the Administrator receives the request, the Administrator shall review the determination and provide to the borrower and the lender with a letter stating whether or not the *residential* building or mobile home is in an area having special flood hazards. The determination of the Administrator shall be final.

(B) EFFECT OF DETERMINATION.—Any person to whom a borrower provides a letter issued by the Administrator pursuant to subparagraph (A), stating that the *residential* building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title to require the purchase of



flood insurance for such *residential* building or mobile home during the period determined by the Administrator which shall be specified in the letter and shall begin on the date on which such letter is provided.

(C) EFFECT OF FAILURE TO RESPOND.—If a request under subparagraph (A) is made in connection with the origination of a loan and the Administrator fails to provide a letter under subparagraph (A) before the later of (i) the expiration of the 45-day period under such subparagraph, or (ii) the closing of the loan, no person shall have an obligation under this title to require the purchase of flood insurance for the *residential* building or mobile home securing the loan until such letter is provided.

(6) APPLICABILITY.—This subsection shall apply to all loans outstanding on or after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(f) CIVIL MONETARY PENALTIES FOR FAILURE TO REQUIRE FLOOD INSURANCE OR NOTIFY.—

(1) CIVIL MONETARY PENALTIES AGAINST REGULATED LENDERS.—Any regulated lending institution that is found to have a pattern or practice of committing violations under paragraph (2) shall be assessed a civil penalty by the appropriate Federal entity for lending regulation in the amount provided under paragraph (5).

(2) LENDER VIOLATIONS.—The violations referred to in paragraph (1) shall include—

(A) making, increasing, extending, or renewing loans in violation of—

(i) the regulations issued pursuant to subsection (b) of this section;

(ii) the escrow requirements under subsection (d) of this section; or

(iii) the notice requirements under section 1364 of the National Flood Insurance Act of 1968; or

(B) failure to provide notice or purchase flood insurance coverage in violation of subsection (e) of this section.

(3) CIVIL MONETARY PENALTIES AGAINST GSE'S.—

(A) IN GENERAL.—If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the Director of the Federal Housing Finance Agency to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3), the Director of such Office shall assess a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.

(B) DEFINITION.—For purposes of this subsection, the term “enterprise” means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(4) NOTICE AND HEARING.—A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.

(5) AMOUNT.—A civil monetary penalty under this subsection may not exceed \$2,000 for each violation under paragraph (2) or paragraph (3).

(6) LENDER COMPLIANCE.—Notwithstanding any State or local law, for purposes of this subsection, any regulated lending institution that purchases flood insurance or renews a contract for flood insurance on behalf of or as an agent of a borrower of a loan for which flood insurance is required shall be considered to have complied with the regulations issued under subsection (b).

(7) EFFECT OF TRANSFER ON LIABILITY.—Any sale or other transfer of a loan by a regulated lending institution that has committed a violation under paragraph (1), that occurs subsequent to the violation, shall not affect the liability of the transferring lender with respect to any penalty under this subsection. A lender shall not be liable for any violations relating to a loan committed by another regulated lending institution that previously held the loan.

(8) DEPOSIT OF PENALTIES.—Any penalties collected under this subsection shall be paid into the National Flood Mitigation Fund under section 1367 of the National Flood Insurance Act of 1968.

(9) ADDITIONAL PENALTIES.—Any penalty under this subsection shall be in addition to any civil remedy or criminal penalty otherwise available.

(10) STATUTE OF LIMITATIONS.—No penalty may be imposed under this subsection after the expiration of the 4-year period beginning on the date of the occurrence of the violation for which the penalty is authorized under this subsection.

(g) OTHER ACTIONS TO REMEDY PATTERN OF NONCOMPLIANCE.—

(1) AUTHORITY OF FEDERAL ENTITIES FOR LENDING REGULATION.—A Federal entity for lending regulation may require a regulated lending institution to take such remedial actions as are necessary to ensure that the regulated lending institution complies with the requirements of the national flood insurance program if the Federal agency for lending regulation makes a determination under paragraph (2) regarding the regulated lending institution.

(2) DETERMINATION OF VIOLATIONS.—A determination under this paragraph shall be a finding that—

(A) the regulated lending institution has engaged in a pattern and practice of noncompliance in violation of the regulations issued pursuant to subsection (b), (d), or (e) or the notice requirements under section 1364 of the National Flood Insurance Act of 1968; and

(B) the regulated lending institution has not demonstrated measurable improvement in compliance despite the assessment of civil monetary penalties under subsection (f).

(h) FEE FOR DETERMINING LOCATION.—Notwithstanding any other Federal or State law, any person who makes a loan secured by *residential* improved real estate or a mobile home or a servicer for such a loan may charge a reasonable fee for the costs of determining whether the *residential* building or mobile home se-

curing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

(1) BORROWER FEE.—The borrower under such a loan may be charged the fee, but only if the determination—

(A) is made pursuant to the making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(B) is made pursuant to a revision or updating under section 1360(f) of the floodplain areas and flood-risk zones or publication of a notice or compendia under subsection (h) or (i) of section 1360 that affects the area in which the *residential* improved real estate or mobile home securing the loan is located or that, in the determination of the Administrator, may reasonably be considered to require a determination under this subsection; or

(C) results in the purchase of flood insurance coverage pursuant to the requirement under subsection (e)(2).

(2) PURCHASER OR TRANSFEREE FEE.—The purchaser or transferee of such a loan may be charged the fee in the case of sale or transfer of the loan.

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**NATIONAL FLOOD INSURANCE ACT OF 1968**

\* \* \* \* \*

**TITLE XIII—NATIONAL FLOOD INSURANCE**

\* \* \* \* \*

**CHAPTER II—ORGANIZATION AND ADMINISTRATION OF THE FLOOD INSURANCE PROGRAM**

\* \* \* \* \*

**PART C—PROVISIONS OF GENERAL APPLICABILITY**

**SERVICES BY INSURANCE INDUSTRY**

SEC. 1345. (a) In administering the flood insurance program under this chapter, the Administrator is authorized to enter into any contracts, agreements, or other appropriate arrangements which may, from time to time, be necessary for the purpose of utilizing, on such terms and conditions as may be agreed upon, the facilities and services of any insurance companies or other insurers, insurance agents and brokers, or insurance adjustment organizations; and such contracts, agreements, or arrangements may include provision for payment of applicable operating costs and allowances for such facilities and services as set forth in the schedules prescribed under section 1311.

(b) Any such contracts, agreements, or other arrangements may be entered into without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provisions of law requiring competitive bidding and without regard to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) The Administrator of the Federal Emergency Management Agency shall hold any agent or broker selling or undertaking to sell flood insurance under this title harmless from any judgment for damages against such agent or broker as a result of any court action by a policyholder or applicant arising out of an error or omission on the part of the Federal Emergency Management Agency, and shall provide any such agent or broker with indemnification, including court costs and reasonable attorney fees, arising out of and caused by an error or omission on the part of the Federal Emergency Management Agency and its contractors. The Administrator of the Federal Emergency Management Agency may not hold harmless or indemnify an agent or broker for his or her error or omission.

(d) FEMA AUTHORITY ON TRANSFER OF POLICIES.—Notwithstanding any other provision of this title, the Administrator may, at the discretion of the Administrator, refuse to accept the transfer of the administration of policies for coverage under the flood insurance program under this title that are written and administered by any insurance company or other insurer, or any insurance agent or broker.

(e) RISK TRANSFER.—

(1) AUTHORITY.—The Administrator may secure reinsurance of coverage provided by the flood insurance program from the private reinsurance and capital markets at rates and on terms determined by the Administrator to be reasonable and appropriate, in an amount sufficient to maintain the ability of the program to pay claims.

(2) REQUIRED RISK TRANSFER COVERAGE.—

(A) REQUIREMENT.—*Not later than the expiration of the 18-month period beginning upon the date of the enactment of this paragraph and at all times thereafter, the Administrator shall annually cede a portion of the risk of the flood insurance program under this title to the private reinsurance or capital markets, or any combination thereof, and at rates and terms that the Administrator determines to be reasonable and appropriate, in an amount that—*

*(i) is sufficient to maintain the ability of the program to pay claims; and*

*(ii) manages and limits the annual exposure of the flood insurance program to flood losses in accordance with the probable maximum loss target established for such year under subparagraph (B).*

(B) PROBABLE MAXIMUM LOSS TARGET.—*The Administrator shall for each fiscal year, establish a probable maximum loss target for the national flood insurance program that shall be the maximum probable loss under the national flood insurance program that is expected to occur in such fiscal year.*

(C) CONSIDERATIONS.—*In establishing the probable maximum loss target under subparagraph (B) for each fiscal year and carrying out subparagraph (A), the Administrator shall consider—*

*(i) the probable maximum loss targets for other United States public natural catastrophe insurance*

programs, including as State wind pools and earthquake programs;

(ii) the probable maximum loss targets of other risk management organizations, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(iii) catastrophic, actuarial, and other appropriate data modeling results of the national flood insurance program portfolio;

(iv) the availability of funds in the National Flood Insurance Fund established under section 1310 (42 U.S.C. 4017);

(v) the availability of funds in the National Flood Insurance Reserve Fund established under section 1310A (42 U.S.C. 4017a);

(vi) the availability of borrowing authority under section 1309 (42 U.S.C. 4016);

(vii) the ability of the Administrator to repay outstanding debt;

(viii) amounts appropriated to the Administrator to carry out the national flood insurance program;

(ix) reinsurance, capital markets, catastrophe bonds, collateralized reinsurance, resilience bonds, and other insurance-linked securities, and other risk transfer opportunities; and

(x) any other factor the Administrator determines appropriate.

(D) *MULTI-YEAR CONTRACTS.*—Nothing in this paragraph may be construed to prevent or prohibit the Administrator from complying with the requirement under subparagraph (A) regarding ceding risk through contracts having a duration longer than one year.

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### CHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

#### IDENTIFICATION OF FLOOD-PRONE AREAS

SEC. 1360. (a) The Administrator **[is authorized to consult]** is authorized—

(1) to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may—

**[(1)]** (A) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, within five years following the date of the enactment of this Act, and

**[(2)]** (B) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates

of probable flood caused loss for the various flood risk zones for each of these areas until the date specified in section 1319[.]; and

(2) to receive proposed alternative maps from communities developed pursuant to standards and requirements recommended by the Technical Mapping Advisory Council, as required by section 100215(m) of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4101a(m)) and adopted by the Administrator as required by section 100216(c)(3) of such Act (42 U.S.C. 4101b(c)(3)), so that the Administrator may—

(A) publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, and

(B) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates of probable flood caused loss for the various flood risk zones for each of these areas until the date specified in section 1319.

(b) The Administrator is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the Administrator is authorized, without regard to subsections (a) and (b) of section 3324 of title 31, United States Code, and section 3709 of the Revised Statutes (41 U.S.C. 5), to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.

(c) The Secretary of Defense (through the Army Corps of Engineers), the Secretary of the Interior (through the United States Geological Survey), the Secretary of Agriculture (through the Soil Conservation Service), the Secretary of Commerce (through the National Oceanic and Atmospheric Administration), the head of the Tennessee Valley Authority, and the heads of all other Federal agencies engaged in the identification or delineation of flood-risk zones within the several States shall, in consultation with the Administrator, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones, in order to assist the Administrator to meet the deadline established by this section.

(d) The Administrator shall, not later than September 30, 1984, submit to the Congress a plan for bringing all communities containing flood-risk zones into full program status by September 30, 1987.

(e) REVIEW OF FLOOD MAPS.—Once during each 5-year period (the 1st such period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994) or more often as the Administrator determines necessary, the Administrator shall assess the need to revise and update all floodplain areas and flood risk zones identified, delineated, or established under this section, based on an analysis of all natural hazards affecting flood risks.

(f) UPDATING FLOOD MAPS.—The Administrator shall revise and update any floodplain areas and flood-risk zones—

(1) upon the determination of the Administrator, according to the assessment under subsection (e), that revision and updating are necessary for the areas and zones; or

(2) upon the request from any State or local government stating that specific floodplain areas or flood-risk zones in the State or locality need revision or updating, if sufficient technical data justifying the request is submitted and the unit of government making the request agrees to provide funds in an amount determined by the Administrator.

(g) AVAILABILITY OF FLOOD MAPS.—To promote compliance with the requirements of this title, the Administrator shall make flood insurance rate maps and related information available free of charge to the Federal entities for lending regulation, Federal agency lenders, State agencies directly responsible for coordinating the national flood insurance program, and appropriate representatives of communities participating in the national flood insurance program, and at a reasonable cost to all other persons. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 1310(b)(6).

(h) NOTIFICATION OF FLOOD MAP CHANGES.—The Administrator shall cause notice to be published in the Federal Register (or shall provide notice by another comparable method) of any change to flood insurance map panels and any change to flood insurance map panels issued in the form of a letter of map amendment or a letter of map revision. Such notice shall be published or otherwise provided not later than 30 days after the map change or revision becomes effective. Notice by any method other than publication in the Federal Register shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as notice in the Federal Register. All notices under this subsection shall include information on how to obtain copies of the changes or revisions.

(i) COMPENDIA OF FLOOD MAP CHANGES.—Every 6 months, the Administrator shall publish separately in their entirety within a compendium, all changes and revisions to flood insurance map panels and all letters of map amendment and letters of map revision for which notice was published in the Federal Register or otherwise provided during the preceding 6 months. The Administrator shall make such compendia available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the national flood insurance program pursuant to section 1310 and at cost to all other parties. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 1310(b)(6).

(j) PROVISION OF INFORMATION.—In the implementation of revisions to and updates of flood insurance rate maps, the Administrator shall share information, to the extent appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs.

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## NOTICE REQUIREMENTS

## SEC. 1364. (a) NOTIFICATION OF SPECIAL FLOOD HAZARDS.—

(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by *residential* improved real estate or a mobile home that the regulated lending institution determines is located or is to be located in an area that has been identified by the Administrator under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards, to notify the purchaser or lessee (or obtain satisfactory assurances that the seller or lessor has notified the purchaser or lessee) and the servicer of the loan of such special flood hazards, in writing, a reasonable period in advance of the signing of the purchase agreement, lease, or other documents involved in the transaction. The regulations shall also require that the regulated lending institution retain a record of the receipt of the notices by the purchaser or lessee and the servicer.

(2) FEDERAL AGENCY LENDERS.—Each Federal agency lender shall by regulation require notification in the manner provided under paragraph (1) with respect to any loan that is made by the Federal agency lender and secured by *residential* improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator under this title or the Flood Disaster Protection Act of 1973 as an area having special flood hazards. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1).

(3) CONTENTS OF NOTICE.—Written notification required under this subsection shall include—

(A) a warning, in a form to be established by the Administrator, stating that the *residential* building on the improved real estate securing the loan is located, or the mobile home securing the loan is or is to be located, in an area having special flood hazards;

(B) a description of the flood insurance purchase requirements under section 102(b) of the Flood Disaster Protection Act of 1973;

(C) a statement that flood insurance coverage may be purchased under the national flood insurance program and is also available from private insurers, as required under section 102(b)(6) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)(6)); and

(D) any other information that the Administrator considers necessary to carry out the purposes of the national flood insurance program.

## (b) NOTIFICATION OF CHANGE OF SERVICER.—

(1) LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council) shall by regulation require regulated lending institutions, in connection with the making, increasing, extending, renewing, selling, or transfer-



ring any loan described in subsection (a)(1), to notify the Administrator (or the designee of the Administrator) in writing during the term of the loan of the servicer of the loan. Such institutions shall also notify the Administrator (or such designee) of any change in the servicer of the loan, not later than 60 days after the effective date of such change. The regulations under this subsection shall provide that upon any change in the servicing of a loan, the duty to provide notification under this subsection shall transfer to the transferee servicer of the loan.

(2) FEDERAL AGENCY LENDERS.—Each Federal agency lender shall by regulation provide for notification in the manner provided under paragraph (1) with respect to any loan described in subsection (a)(1) that is made by the Federal agency lender. Any regulations issued under this paragraph shall be consistent with and substantially identical to the regulations issued under paragraph (1) of this subsection.

(c) NOTIFICATION OF EXPIRATION OF INSURANCE.—The Administrator (or the designee of the Administrator) shall, not less than 45 days before the expiration of any contract for flood insurance under this title, issue notice of such expiration by first class mail to the owner of the property covered by the contract, the servicer of any loan secured by the property covered by the contract, and (if known to the Administrator) the owner of the loan.

#### STANDARD HAZARD DETERMINATION FORMS

SEC. 1365. (a) DEVELOPMENT.—The Administrator, in consultation with representatives of the mortgage and lending industry, the Federal entities for lending regulation, the Federal agency lenders, and any other appropriate individuals, shall develop a standard form for determining, in the case of a loan secured by *residential* improved real estate or a mobile home, whether the *residential* building or mobile home is located in an area identified by the Administrator as an area having special flood hazards and in which flood insurance under this title is available. The form shall be established by regulations issued not later than 270 days after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.

(b) DESIGN AND CONTENTS.—

(1) PURPOSE.—The form under subsection (a) shall be designed to facilitate compliance with the flood insurance purchase requirements of this title.

(2) CONTENTS.—The form shall require identification of the type of flood-risk zone in which the *residential* building or mobile home is located, the complete map and panel numbers for the *residential* improved real estate or property on which the mobile home is located, the community identification number and community participation status (for purposes of the national flood insurance program) of the community in which the *residential* improved real estate or such property is located, and the date of the map used for the determination, with respect to flood hazard information on file with the Administrator. If the *residential* building or mobile home is not located in an area having special flood hazards the form shall require a statement to such effect and shall indicate the complete map

and panel numbers of the *residential* improved real estate or property on which the mobile home is located. If the complete map and panel numbers are not available because the *residential* building or mobile home is not located in a community that is participating in the national flood insurance program or because no map exists for the relevant area, the form shall require a statement to such effect. The form shall provide for inclusion or attachment of any relevant documents indicating revisions or amendments to maps.

(c) **REQUIRED USE.**—The Federal entities for lending regulation shall by regulation require the use of the form under this section by regulated lending institutions. Each Federal agency lender shall by regulation provide for the use of the form with respect to any loan made by such Federal agency lender. The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and the Government National Mortgage Association shall require the use of the form with respect to any loan purchased by such entities. A lender or other person may comply with the requirement under this subsection by using the form in a printed, computerized, or electronic manner.

(d) **GUARANTEES REGARDING INFORMATION.**—In providing information regarding special flood hazards on the form developed under this section, any lender (or other person required to use the form) who makes, increases, extends, or renews a loan secured by *residential* improved real estate or a mobile home may provide for the acquisition or determination of such information to be made by a person other than such lender (or other person), only to the extent such person guarantees the accuracy of the information.

(e) **RELIANCE ON PREVIOUS DETERMINATION.**—Any person increasing, extending, renewing, or purchasing a loan secured by *residential* improved real estate or a mobile home may rely on a previous determination of whether the *residential* building or mobile home is located in an area having special flood hazards (and shall not be liable for any error in such previous determination), if the previous determination was made not more than 7 years before the date of the transaction and the basis for the previous determination has been set forth on a form under this section, unless—

(1) map revisions or updates pursuant to section 1360(f) after such previous determination have resulted in the *residential* building or mobile home being located in an area having special flood hazards; or

(2) the person contacts the Administrator to determine when the most recent map revisions or updates affecting such property occurred and such revisions and updates have occurred after such previous determination.

(f) **EFFECTIVE DATE.**—The regulations under this section requiring use of the form established pursuant to this section shall be issued together with the regulations required under subsection (a) and shall take effect upon the expiration of the 180-day period beginning on such issuance.

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CHAPTER IV—APPROPRIATIONS AND MISCELLANEOUS  
PROVISIONS

DEFINITIONS

SEC. 1370. (a) As used in this title—

(1) the term “flood” shall have such meaning as may be prescribed in regulations of the Administrator, and may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

(2) the terms “United States” (when used in a geographic sense) and “State” includes the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands;

(3) the terms “insurance company”, “other insurer” and “insurance agent or broker” include any organization or person that is authorized to engage in the business of insurance under the laws of any State, subject to the reporting requirements of the Securities Exchange Act of 1934 pursuant to section 13(a) or 15(d) of such Act (15 U.S.C. 78m(a) and 78o(d)), or authorized by the Administrator to assume reinsurance on risks insured by the flood insurance program;

(4) the term “insurance adjustment organization” includes any organizations and persons engaged in the business of adjusting loss claims arising under insurance policies issued by any insurance company or other insurer;

(5) the term “person” includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof;

(6) the term “Administrator” means the Administrator of the Federal Emergency Management Agency;

(7) the term “repetitive loss structure” means a structure covered by a contract for flood insurance that—

(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and

(B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

(8) the term “Federal agency lender” means a Federal agency that makes direct loans secured by *residential* improved real estate or a mobile home, to the extent such agency acts in such capacity;

(9) the term “Federal entity for lending regulation” means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means the entity primarily responsible for the supervision of the institution;

(10) the term “improved real estate” means real estate upon which a building is located;

(11) the term “lender” means a regulated lending institution or Federal agency lender;

(12) the term “natural and beneficial floodplain functions” means—

(A) the functions associated with the natural or relatively undisturbed floodplain that (i) moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effect of waves and storm surge from storms, and (ii) reduce flood related damage; and

(B) ancillary beneficial functions, including maintenance of water quality and recharge of ground water, that reduce flood related damage;

(13) the term “regulated lending institution” means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation;

(14) the term “residential improved real estate” means improved real estate that—

(A) is primarily used for residential purposes, as defined by the Federal entities for lending regulation; and

(B) secures financing or financial assistance provided through a federally related single family loan program, as defined by the Federal entities for lending regulation;

[(14)] (15) the term “servicer” means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan; and

[(15)] (16) the term “substantially damaged structure” means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the Administrator, or by a community ordinance, whichever is lower.

(b) The term “flood” shall also include inundation from mudslides which are proximately caused by accumulations of water on or under the ground; and all of the provisions of this title shall apply with respect to such mudslides in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Administrator may prescribe to achieve (with respect to such mudslides) the purposes of this title and the objectives of the program.

(c) The term “flood” shall also include the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, and all of the provisions of this title shall apply with respect to such collapse or subsidence in the same manner and to the same extent as with respect to floods described in subsection (a)(1), subject to and in accordance with such

regulations, modifying the provisions of this title (including the provisions relating to land management and use) to the extent necessary to insure that they can be effectively so applied, as the Administrator may prescribe to achieve (with respect to such collapse or subsidence) the purposes of this title and the objectives of the program.

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**BIGGERT-WATERS FLOOD INSURANCE REFORM ACT OF  
2012**

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**DIVISION F—MISCELLANEOUS**

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**TITLE II—FLOOD INSURANCE**

**Subtitle A—Flood Insurance Reform and  
Modernization**

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**SEC. 100215. TECHNICAL MAPPING ADVISORY COUNCIL.**

(a) **ESTABLISHMENT.**—There is established a council to be known as the Technical Mapping Advisory Council (in this section referred to as the “Council”).

(b) **MEMBERSHIP.**—

(1) **IN GENERAL.**—The Council shall consist of—

- (A) the Administrator (or the designee thereof);
- (B) the Secretary of the Interior (or the designee thereof);

(C) the Secretary of Agriculture (or the designee thereof);  
(D) the Under Secretary of Commerce for Oceans and Atmosphere (or the designee thereof); and

(E) 16 additional members appointed by the Administrator or the designee of the Administrator, who shall be—

- (i) a member of a recognized professional surveying association or organization;
- (ii) a member of a recognized professional mapping association or organization;
- (iii) a member of a recognized professional engineering association or organization;
- (iv) a member of a recognized professional association or organization representing flood hazard determination firms;
- (v) a representative of the United States Geological Survey;
- (vi) a representative of a recognized professional association or organization representing State geographic information;

- (vii) a representative of State national flood insurance coordination offices;
- (viii) a representative of the Corps of Engineers;
- (ix) a member of a recognized regional flood and storm water management organization;
- (x) 2 representatives of different State government agencies that have entered into cooperating technical partnerships with the Administrator and have demonstrated the capability to produce flood insurance rate maps;
- (xi) 2 representatives of different local government agencies that have entered into cooperating technical partnerships with the Administrator and have demonstrated the capability to produce flood insurance maps;
- (xii) a member of a recognized floodplain management association or organization;
- (xiii) a member of a recognized risk management association or organization; and
- (xiv) a State mitigation officer.

(2) **QUALIFICATIONS.**—Members of the Council shall be appointed based on their demonstrated knowledge and competence regarding surveying, cartography, remote sensing, geographic information systems, or the technical aspects of preparing and using flood insurance rate maps. In appointing members under paragraph (1)(E), the Administrator shall, to the maximum extent practicable, ensure that the membership of the Council has a balance of Federal, State, local, tribal, and private members, and includes geographic diversity, including representation from areas with coastline on the Gulf of Mexico and other States containing areas identified by the Administrator as at high risk for flooding or as areas having special flood hazards.

(c) **DUTIES.**—The Council shall—

- (1) recommend to the Administrator how to improve in a cost-effective manner the—
  - (A) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and
  - (B) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States;
- (2) recommend to the Administrator mapping standards and guidelines for—
  - (A) flood insurance rate maps; and
  - (B) data accuracy, data quality, data currency, and data eligibility;
- (3) recommend to the Administrator how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification;
- (4) recommend procedures for delegating mapping activities to State and local mapping partners;
- (5) recommend to the Administrator and other Federal agencies participating in the Council—

- (A) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination; and
  - (B) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies; **[and]**
  - (6) *recommend to the Administrator methods or actions to make the flood mapping processes more efficient;*
  - (7) *recommend to the Administrator methods or actions to minimize any cost, data, and paperwork requirements of the flood mapping processes;*
  - (8) *assist communities, and in particular smaller communities, in locating the resources required to participate in the development of flood elevations and flood hazard area designations; and*
  - [(6)]** (9) submit an annual report to the Administrator that contains—
    - (A) a description of the activities of the Council;
    - (B) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update flood insurance rate maps, as required under section 100216; and
    - (C) a summary of recommendations made by the Council to the Administrator.
- (d) FUTURE CONDITIONS RISK ASSESSMENT AND MODELING REPORT.—
- (1) IN GENERAL.—The Council shall consult with scientists and technical experts, other Federal agencies, States, and local communities to—
    - (A) develop recommendations on how to—
      - (i) ensure that flood insurance rate maps incorporate the best available climate science to assess flood risks; and
      - (ii) ensure that the Federal Emergency Management Agency uses the best available methodology to consider the impact of—
        - (I) the rise in the sea level; and
        - (II) future development on flood risk; and
    - (B) not later than 1 year after the date of enactment of this Act, prepare written recommendations in a future conditions risk assessment and modeling report and to submit such recommendations to the Administrator.
  - (2) RESPONSIBILITY OF THE ADMINISTRATOR.—The Administrator, as part of the ongoing program to review and update National Flood Insurance Program rate maps under section 100216, shall incorporate any future risk assessment submitted under paragraph (1)(B) in any such revision or update.
  - (e) CHAIRPERSON.—The members of the Council shall elect 1 member to serve as the chairperson of the Council (in this section referred to as the “Chairperson”).
  - (f) COORDINATION.—To ensure that the Council’s recommendations are consistent, to the maximum extent practicable, with national digital spatial data collection and management standards, the Chairperson shall consult with the Chairperson of the Federal Geographic Data Committee (established pursuant to Office of Management and Budget Circular A-16).

(g) COMPENSATION.—Members of the Council shall receive no additional compensation by reason of their service on the Council.

(h) MEETINGS AND ACTIONS.—

(1) IN GENERAL.—The Council shall meet not less frequently than twice each year at the request of the Chairperson or a majority of its members, and may take action by a vote of the majority of the members.

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

(i) OFFICERS.—The Chairperson may appoint officers to assist in carrying out the duties of the Council under subsection (c).

(j) STAFF.—

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

(2) STAFF OF OTHER FEDERAL AGENCIES.—Upon request of the Chairperson, any other Federal agency that is a member of the Council may detail, on a nonreimbursable basis, personnel to assist the Council in carrying out its duties.

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

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

(1) recommendations made by the Council;

(2) actions taken by the Federal Emergency Management Agency to address such recommendations to improve flood insurance rate maps and flood risk data; and

(3) any recommendations made by the Council that have been deferred or not acted upon, together with an explanatory statement.

(m) COMMUNITY FLOOD MAPS.—

(1) STANDARDS AND PROCEDURES.—*In addition to the other duties of the Council under this section, not later than the expiration of the 12-month period beginning on the date of the enactment of this subsection, the Council shall recommend to the Administrator standards and requirements for chief executive officers, or entities designated by chief executive officers, of States and communities participating in the National Flood Insurance Program to use in mapping flood hazards located in States and communities that choose to develop alternative maps to the flood insurance rate maps developed by the Agency. The recommended standards and requirements shall include procedures for providing notification and appeal rights to individuals within the communities of the proposed flood elevation determinations.*

(2) EXEMPTION FROM RULEMAKING.—*Until such time as the Administrator promulgates regulations implementing paragraph (1) of this subsection, the Administrator may, notwithstanding any other provision of law, adopt policies and proce-*



*dures necessary to implement such paragraphs without undergoing notice and comment rulemaking and without conducting regulatory analyses otherwise required by statute, regulation, or executive order.*

**SEC. 100216. NATIONAL FLOOD MAPPING PROGRAM.**

(a) **REVIEWING, UPDATING, AND MAINTAINING MAPS.**—The Administrator, in coordination with the Technical Mapping Advisory Council established under section 100215, shall establish an ongoing program under which the Administrator shall review, update, and maintain National Flood Insurance Program rate maps *prepared by the Administrator, or by a community pursuant to section 1360(a)(2) of the National Flood Insurance Act of 1968*, in accordance with this section.

(b) **MAPPING.**—

(1) **IN GENERAL.**—In carrying out the program established under subsection (a), the Administrator shall—

(A) identify, review, update, maintain, and publish National Flood Insurance Program rate maps with respect to—

(i) all populated areas and areas of possible population growth located within the 100-year floodplain;

(ii) all populated areas and areas of possible population growth located within the 500-year floodplain;

(iii) areas of residual risk, including areas that are protected by levees, dams, and other flood control structures;

(iv) areas that could be inundated as a result of the failure of a levee, dam, or other flood control structure;

(v) areas that are protected by non-structural flood mitigation features; and

(vi) the level of protection provided by flood control structures and by non-structural flood mitigation features;

(B) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates of probable flood caused loss for the various flood risk zones for each such area; and

(C) use, in identifying, reviewing, updating, maintaining, or publishing any National Flood Insurance Program rate map required under this section or under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.), the most accurate topography and elevation data available.

(2) **MAPPING ELEMENTS.**—Each map updated under this section shall—

(A) assess the accuracy of current ground elevation data used for hydrologic and hydraulic modeling of flooding sources and mapping of the flood hazard and wherever necessary acquire new ground elevation data utilizing the most up-to-date geospatial technologies in accordance with guidelines and specifications of the Federal Emergency Management Agency; and

(B) develop National Flood Insurance Program flood data on a watershed basis—

- (i) to provide the most technically effective and efficient studies and hydrologic and hydraulic modeling; and
  - (ii) to eliminate, to the maximum extent possible, discrepancies in base flood elevations between adjacent political subdivisions.
- (3) OTHER INCLUSIONS.—In updating maps under this section, the Administrator shall include—
  - (A) any relevant information on coastal inundation from—
    - (i) an applicable inundation map of the Corps of Engineers; and
    - (ii) data of the National Oceanic and Atmospheric Administration relating to storm surge modeling;
  - (B) any relevant information of the United States Geological Survey on stream flows, watershed characteristics, and topography that is useful in the identification of flood hazard areas, as determined by the Administrator;
  - (C) any relevant information on land subsidence, coastal erosion areas, changing lake levels, and other flood-related hazards;
  - (D) any relevant information or data of the National Oceanic and Atmospheric Administration and the United States Geological Survey relating to the best available science regarding future changes in sea levels, precipitation, and intensity of hurricanes; and
  - (E) any other relevant information as may be recommended by the Technical Mapping Advisory Committee.
- (c) STANDARDS.—In updating and maintaining maps under this section, the Administrator shall—
  - (1) establish standards to—
    - (A) ensure that maps are adequate for—
      - (i) flood risk determinations; and
      - (ii) use by State and local governments in managing development to reduce the risk of flooding; and
    - (B) facilitate identification and use of consistent methods of data collection and analysis by the Administrator, in conjunction with State and local governments, in developing maps for communities with similar flood risks, as determined by the Administrator; **[and]**
  - (2) publish maps in a format that is—
    - (A) digital geospatial data compliant;
    - (B) compliant with the open publishing and data exchange standards established by the Open Geospatial Consortium; and
    - (C) aligned with official data defined by the National Geodetic Survey**[.]**;
  - (3) *establish and adopt standards and requirements for development by States and communities of alternative flood insurance rate maps to be submitted to the Administrator pursuant to section 1360(a)(2) of the National Flood Insurance Act of 1968, taking into consideration the recommendations of the Technical Mapping Advisory Council made pursuant to section 100215(m) of this Act (42 U.S.C. 4101a(m)); and*

(4) *in the case of proposed alternative maps received by the Administrator pursuant to such section 1360(a)(2), not later than the expiration of the 6-month period beginning upon receipt of such proposed alternative maps—*

(A) *determine whether such maps were developed in accordance with the standards and requirements adopted pursuant to paragraph (3) of this subsection; and*

(B) *approve or disapprove such proposed maps for use under National Flood Insurance Program.*

(d) COMMUNICATION AND OUTREACH.—

(1) IN GENERAL.—The Administrator shall—

(A) before commencement of any mapping or map updating process, notify each community affected of the model or models that the Administrator plans to use in such process and provide an explanation of why such model or models are appropriate;

(B) provide each community affected a *maximum* 30-day period beginning upon notification under subparagraph (A) to consult with the Administrator regarding the appropriateness, with respect to such community, of the mapping model or models to be used; provided that consultation by a community pursuant to this subparagraph shall not waive or otherwise affect any right of the community to appeal any flood hazard determinations;

(C) upon completion of the first Independent Data Submission, transmit a copy of such Submission to the affected community, provide the affected community a *maximum* 30-day period during which the community may provide data to Administrator that can be used to supplement or modify the existing data, and incorporate any data that is consistent with prevailing engineering principles;

(D) work with States, local communities, and property owners to identify areas and features described in subsection (b)(1)(A)(v);

(E) work to enhance communication and outreach to States, local communities, and property owners about the effects—

(i) of any potential changes to National Flood Insurance Program rate maps that may result from the mapping program required under this section; and

(ii) that any such changes may have on flood insurance purchase requirements;

(F) engage with local communities to enhance communication and outreach to the residents of such communities, including tenants (with regard to contents insurance), on the matters described under subparagraph (E); and

(G) not less than 30 days before issuance of any preliminary map, notify the Senators for each State affected and each Member of the House of Representatives for each congressional district affected by the preliminary map in writing of—

(i) the estimated schedule for—

(I) community meetings regarding the preliminary map;

(II) publication of notices regarding the preliminary map in local newspapers; and

(III) the commencement of the appeals process regarding the map; and

(ii) the estimated number of homes and businesses that will be affected by changes contained in the preliminary map, including how many structures will be that were not previously located in an area having special flood hazards will be located within such an area under the preliminary map; and

(H) upon the issuance of any proposed map and any notice of an opportunity to make an appeal relating to the proposed map, notify the Senators for each State affected each Member of the House of Representatives for each congressional district affected by the proposed map of any action taken by the Administrator with respect to the proposed map or an appeal relating to the proposed map.

(2) REQUIRED ACTIVITIES.—The communication and outreach activities required under paragraph (1) shall include—

(A) notifying property owners when their properties become included in, or when they are excluded from, an area covered by the mandatory flood insurance purchase requirement under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a);

(B) educating property owners regarding the flood risk and reduction of this risk in their community, including the continued flood risks to areas that are no longer subject to the flood insurance mandatory purchase requirement;

(C) educating property owners regarding the benefits and costs of maintaining or acquiring flood insurance, including, where applicable, lower-cost preferred risk policies under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) for such properties and the contents of such properties;

(D) educating property owners about flood map revisions and the process available to such owners to appeal proposed changes in flood elevations through their community, including by notifying local radio and television stations; and

(E) encouraging property owners to maintain or acquire flood insurance coverage.

(e) COMMUNITY REMAPPING REQUEST.—Upon the adoption by the Administrator of any recommendation by the Technical Mapping Advisory Council for reviewing, updating, or maintaining National Flood Insurance Program rate maps in accordance with this section, a community that believes that its flood insurance rates in effect prior to adoption would be affected by the adoption of such recommendation may submit a request for an update of its rate maps, which may be considered at the Administrator's sole discretion. The Administrator shall establish a protocol for the evaluation of such community map update requests.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this section \$400,000,000 for each of fiscal years 2013 through 2017.

\* \* \* \* \*

## MINORITY VIEWS

H.R. 2246 would repeal the federal requirement to purchase flood insurance for commercial properties and multifamily properties with commercial financing. The Federal Disaster Protection Act requires properties located in a special flood hazard area with a federally-backed mortgage to be covered with flood insurance. Under the law, commercial properties must obtain a maximum of \$500,000 of coverage per structure. H.R. 2246 creates a wholesale exemption from this requirement for all commercial properties regardless of size, sophistication, or loan amount.

Some stakeholders have argued that the mandatory purchase requirement is superfluous and cumbersome for large and sophisticated commercial entities who need coverage well above the current maximum coverage of \$500,000 available from the National Flood Insurance Program (NFIP). These entities often purchase flood insurance in the private market because the NFIP does not provide enough coverage for their needs. But due to perceived ambiguity as to whether that private policy counts as compliance with the mandatory purchase requirement, some entities resort to buying a first-dollar NFIP policy in addition to an excess private policy rather than simply purchasing one private policy to cover all of their needs. Some stakeholders have also expressed concern with the mandatory purchase requirement as it relates to the purchase of blanket insurance policies. The NFIP currently does not provide blanket policies, and instead requires separate policies for each individual structure. This can be administratively inefficient and cumbersome for commercial entities with multiple structures.

H.R. 2246 presents an overly broad solution for issues that are specific to large commercial entities, and a number of groups have expressed their opposition to this wholesale exemption. The Independent Community Bankers, for example, oppose this provision because it would harm community banks and small businesses because it increases the likelihood that the collateral they are securing would be unprotected and likely suffer a loss in the event of a flood. The flood insurance take-up rate for properties outside of this mandatory purchase requirement is extremely low, meaning that most people who aren't required to buy flood insurance do not purchase it. That is why a coalition of stakeholders representing the commercial and multifamily real estate industry have expressed concerns about affordability challenges for low- and mid-value properties that will likely opt to forgo flood insurance if given the choice. This creates a ripple effect in the case of a flood where the road to recovery is longer and more difficult for businesses in flood zones.

H.R. 2246 also requires the Federal Emergency Management Agency (FEMA) to annually cede a portion of its risk to the private reinsurance or capital markets, which could lead unnecessarily to

higher costs on the NFIP and subsequently higher premiums on policyholders. The Biggert-Waters Act of 2012, clarified that FEMA has the authority to purchase reinsurance from the private reinsurance and capital markets and in the past two years, FEMA has exercised this authority as appropriate. In January of this year, FEMA agreed to a transfer of \$1.042 billion of the NFIP's financial risk to 25 reinsurers through January 1, 2018. The reinsurance contract, which cost FEMA \$150 million in premium, requires the reinsurers to cover 26 percent of losses in a single flooding event between \$4 billion and \$8 billion. According to FEMA, there is a 17.2 percent chance of triggering this clause in 2017. Further, FEMA intends to use its current authority to make future reinsurance purchases.<sup>1</sup>

Notwithstanding FEMA's actions and multi-year plan to further engage the reinsurance markets, H.R. 2246 would place cumbersome requirements on FEMA with regard to how much risk it must cede to the private sector. Specifically, the bill would require FEMA to make this determination in accordance with a probable maximum' loss (PML) target, which departs from traditional PML metrics would hamstring FEMA's ability to negotiate the best deal possible for the National Flood Insurance Program and policyholders and appears to be confusing at best and unworkable at worst.

Lastly, H.R. 2246 would set up a process to supplant FEMA's Flood Insurance Rate Maps (FIRMs) with private or community flood maps. The bill would require the Technical Mapping Advisory Council (TMAC) to develop a set of standards, guidelines, and procedures that communities would use to develop alternative flood maps. It is unclear how this would improve on current law as FEMA already conducts extensive communication and outreach efforts with the community during the mapping process, including various minimum waiting periods, and consideration of any additional data that the community provides to improve the map. Moreover, today FIRMs cannot go into effect until a community adopts the map. H.R. 2246 would flip this process on its head, by requiring FEMA make the final certification. While this new process may advantage wealthier communities with the means to take on this-complicated and technical process, the bill does not provide any finding or technical assistance for lower-income communities that lack the resources to do so.

For these reasons, we oppose H.R. 2246.

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<sup>1</sup>See <https://www.fema.gov/nfip-reinsurance-program>.

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