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S. 3589

[Report No. 109-271]

To amend the National Flood Insurance Act of 1968, to restore the financial solvency of the flood insurance fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 28, 2006

Mr. SHELBY, from the Committee on Banking, Housing, and Urban Affairs reported the following original bill; which was read twice and placed on the calendar

A BILL

To amend the National Flood Insurance Act of 1968, to restore the financial solvency of the flood insurance fund, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Flood Insurance Reform and Modernization Act of 2006'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; Table of contents.

Sec. 2. Findings.

Sec. 3. Definitions.

Sec. 4. Reform of premium rate structure.

Sec. 5. Mandatory coverage areas.

Sec. 6. Premium adjustment.

Sec. 7. State chartered financial institutions.

Sec. 8. Enforcement.

Sec. 9. Escrow of flood insurance payments.

Sec. 10. Financing of funds from the Treasury.

Sec. 11. Borrowing authority debt forgiveness.

Sec. 12. Minimum deductibles for claims under the National Flood Insurance Program.

Sec. 13. Considerations in determining chargeable premium rates.

- Sec. 14. Reserve fund.
- Sec. 15. Repayment plan for borrowing authority.
- Sec. 16. Technical Mapping Advisory Council.
- Sec. 17. National Flood Mapping Program.
- Sec. 18. Removal of limitation on State contributions for updating flood maps.
- Sec. 19. Nonmandatory participation.
- Sec. 20. Notice of flood insurance availability under RESPA.
- Sec. 21. Testing of new floodproofing technologies.
- Sec. 22. Participation in State disaster claims mediation programs.
- Sec. 23. Reiteration of FEMA responsibilities under the 2004 Reform Act.
- Sec. 24. Studies, Audits, and Reports.

SEC. 2. FINDINGS.

Congress finds that--

- (1) the flood insurance claims resulting from the hurricane season of 2005 will likely exceed all previous claims paid by the National Flood Insurance Program;
- (2) the continuation of subsidized premium rates undermines the financial solvency of the National Flood Insurance Fund;
- (3) the presence of subsidized premium rates encourages families to continue residing in high risk areas, often without appropriate mitigation activities;
- (4) substantial flooding occurs outside of existing special flood hazard areas;
- (5) recent events throughout the country involving areas behind man-made structures, known as 'residual risk' areas, have produced catastrophic losses;
- (6) although such man-made structures produce an added element of safety and therefore lessen the probability that a disaster will occur, they are nevertheless susceptible to catastrophic loss, even though such areas at one time were not included within the 100-year floodplain; and
- (7) voluntary participation in the National Flood Insurance Program has been minimal and many families residing outside the 100-year floodplain remain unaware of the potential risk to their lives and property.

SEC. 3. DEFINITIONS.

- (a) In General- In this Act, the following definitions shall apply:
 - (1) NATIONAL FLOOD INSURANCE PROGRAM- The term 'National Flood Insurance Program' means the program established under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.).

(2) 100-year FLOODPLAIN- The term `100-year floodplain' means that area which is subject to inundation from a flood having a 1 percent chance of being equaled or exceeded in any given year.

(3) 500-year FLOODPLAIN- The term `500-year floodplain' means that area which is subject to inundation from a flood having a 0.2 percent chance of being equaled or exceeded in any given year.

(4) WRITE YOUR OWN- The term `Write Your Own' means the cooperative undertaking between the insurance industry and the Flood Insurance Administration which allows participating property and casualty insurance companies to write and service standard flood insurance policies.

(b) Common Terminology- Except as otherwise provided in this Act, any terms used in this Act shall have the meaning given to such terms under section 1370 of the National Flood Insurance Act of 1968 (42 U.S.C. 4121).

SEC. 4. REFORM OF PREMIUM RATE STRUCTURE.

(a) To Exclude Certain Properties From Receiving Subsidized Premium Rates-

(1) IN GENERAL- Section 1307 of the National Flood Insurance Act of 1968 (42 U.S.C. 4014) is amended--

(A) in subsection (a)--

(i) in paragraph (2), by striking `; and' and inserting a semicolon;

(ii) in paragraph (3), by striking the period at the end and inserting `; and'; and

(iii) by adding at the end the following:

`(4) the exclusion of prospective insureds from purchasing flood insurance at rates less than those estimated under paragraph (1), as required by paragraph (2), for certain properties, including for--

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

`(B) any severe repetitive loss property, as defined in section 1361A(b);

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

`(D) any business property; and

`(E) any property which on or after the date of enactment of the Flood Insurance Reform and Modernization Act of 2006 has experienced or sustained--

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

`(ii) substantial improvement exceeding 30 percent of the fair market value of such property.'; and

(B) by adding at the end the following:

(g) No Extension of Subsidy to New Policies or Lapsed Policies- The Director shall not provide flood insurance to prospective insureds at rates less than those estimated under subsection (a)(1), as required by paragraph (2) of that subsection, for--

(1) any property not insured by the flood insurance program as of the date of enactment of the Flood Insurance Reform and Modernization Act of 2006; and

(2) any policy under the flood insurance program that has lapsed in coverage, as a result of the deliberate choice of the holder of such policy.'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall become effective 90 days after the date of the enactment of this Act.

(b) Increase in Annual Limitation on Premium Increases- Section 1308(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(e)) is amended--

(1) by striking 'under this title for any properties within any single' and inserting the following: 'under this title for any properties--

(1) within any single';

(2) by striking '10 percent' and inserting '15 percent'; and

(3) by striking the period at the end and inserting the following: '; and

(2) described in section 1307(a)(4) shall be increased by 25 percent each year, until the average risk premium rate for such properties is equal to the average of the risk premium rates for properties described under paragraph (1).'

SEC. 5. MANDATORY COVERAGE AREAS.

(a) Special Flood Hazard Areas- Not later than 90 days after the date of enactment of this Act, the Director shall issue final regulations establishing a revised definition of areas of special flood hazards for purposes of the National Flood Insurance Program.

(b) Residual Risk Areas- The regulations required by subsection (a) shall--

(1) include any area previously identified by the Director as an area having special flood hazards under section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a)); and

(2) require the expansion of areas of special flood hazards to include areas of residual risk, including areas that are located behind levees, dams, and other man-made structures.

(c) Mandatory Participation in National Flood Insurance Program-

(1) IN GENERAL- Any area described in subsection (b) shall be subject to the mandatory purchase requirements of sections 102 and 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a, 4106).

(2) LIMITATION- The mandatory purchase requirement under paragraph (1) shall have no force or effect until the Director

completes the mapping of all residual risk areas in the United States that the Director determines essential in order to administer the National Flood Insurance Program, as required under section 17.

SEC. 6. PREMIUM ADJUSTMENT.

Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by adding at the end the following:

“(g) Premium Adjustment to Reflect Current Risk of Flood- Notwithstanding subsection (f), and upon completion of the updating of any flood insurance rate map under this Act, the Flood Disaster Protection Act of 1973, or the Flood Insurance Reform and Modernization Act of 2006, any property located in an area that is participating in the national flood insurance program may have the risk premium rate charged for flood insurance on such property adjusted to accurately reflect the current risk of flood to such property, subject to any other provision of this Act.’.

SEC. 7. STATE CHARTERED FINANCIAL INSTITUTIONS.

Section 1305(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4012(c)) is amended--

- (1) in paragraph (1), by striking ‘; and’ and inserting a semicolon;
- (2) in paragraph (2), by striking the period at the end and inserting ‘; and’; and
- (3) by adding at the end the following:
“(3) given satisfactory assurance that by December 31, 2008, lending institutions chartered by a State, and not insured by the Federal Deposit Insurance Corporation, shall be subject to regulations by that State that are consistent with the requirements of section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a).’.

SEC. 8. ENFORCEMENT.

Section 102(f)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(5)) is amended--

- (1) in the first sentence, by striking ‘\$350’ and inserting ‘\$2,000’; and
- (2) by striking the second sentence.

SEC. 9. ESCROW OF FLOOD INSURANCE PAYMENTS.

(a) In General- Section 102(d) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(d)) is amended--

- (1) by amending paragraph (1) to read as follows:

^ (1) REGULATED LENDING INSTITUTIONS- Each Federal entity for lending regulation (after consultation and coordination with the Federal Financial Institutions Examination Council) shall, by regulation, direct that any premiums and fees for flood insurance under the National Flood Insurance Act of 1968, on any property for which a loan has been made for acquisition or construction purposes shall be paid to the mortgage lender, with the same frequency as payments on the loan are made, for the duration of the loan. Upon receipt of any premiums or fees, the lender shall deposit such premiums and fees in an escrow account on behalf of the borrower. Upon receipt of a notice from the Director or the provider of the flood insurance that insurance premiums are due, the remaining balance of an escrow account shall be paid to the provider of the flood insurance.'; and

(2) by adding at the end the following:

^ (6) NOTICE UPON LOAN TERMINATION- Upon final payment of the mortgage, a regulated lending institution shall provide notice to the policyholder that insurance coverage may cease with such final payment. The regulated lending institution shall also provide direction as to how the homeowner may continue flood insurance coverage after the life of the loan.'

(b) Applicability- The amendment made by subsection (a)(1) shall apply to any mortgage outstanding or entered into on or after the expiration of the 2-year period beginning on the date of enactment of this Act.

SEC. 10. FINANCING OF FUNDS FROM THE TREASURY.

(a) In General- Notwithstanding the requirements of section 15(e) of the Federal Flood Insurance Act of 1956 (42 U.S.C. 2414(e)), the Secretary of the Treasury is authorized and directed to transfer, without securing any notes or other obligations from the Director, such sums as may be necessary for the payment of claims for any damage to or loss of property which is covered by flood insurance made available under the National Flood Insurance Program, including any sums which are in excess of amounts borrowed by the Director from the Secretary, as of the date of enactment of this Act, under the authority vested to the Director under section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016), to pay claims resulting from the hurricane season of 2005.

(b) Public Debt Transactions- In meeting the obligations established under subsection (a), the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities issued after the date of enactment of this Act under chapter 31 of title 31, United States Code.

SEC. 11. BORROWING AUTHORITY DEBT FORGIVENESS.

(a) In General- The Secretary of the Treasury relinquishes the right to any repayment of amounts due from the Director in connection with the exercise of the authority vested to the Director to borrow such sums under section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016), to the extent such borrowed sums were used to fund the payment of flood insurance claims under the National Flood Insurance Program for any damage to or loss of property resulting from the hurricanes of 2005.

(b) Certification- The debt forgiveness described under subsection (a) shall only take effect if the Director certifies to the Secretary of Treasury that all authorized resources or funds available to the Director to operate the National Flood Insurance Program--

(1) have been otherwise obligated to pay claims under the National Flood Insurance Program; and

(2) are not otherwise available to make payments to the Secretary on any outstanding notes or obligations issued by the Director and held by the Secretary.

(c) Decrease in Borrowing Authority- The first sentence of subsection (a) of section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)), as amended by the National Flood Insurance Program Enhanced Borrowing Authority Act of 2006 (Public Law 109-208; 120 Stat. 317), is amended by striking ` \$20,775,000,000' and inserting ` \$1,500,000,000'.

SEC. 12. MINIMUM DEDUCTIBLES FOR CLAIMS UNDER THE NATIONAL FLOOD INSURANCE PROGRAM.

Section 1312 of the National Flood Insurance Act of 1968 (42 U.S.C. 4019) is amended--

(1) by striking `The Director is' and inserting the following:

`(a) In General- The Director is'; and

(2) by adding at the end the following:

`(b) Minimum Annual Deductible- For any property or structure which is covered by flood insurance under this title, the minimum annual deductible shall be--

`(1) \$2,000, if construction or substantial improvement occurred on such property or structure on or before December 31, 1974, or before the effective date of an initial flood insurance rate map published by the Director under section 1360 for the area in which such property or structure is located; and

`(2) \$1,000, if construction or substantial improvement occurred on such property or structure after December 31, 1974, or after the effective date of an initial flood insurance rate map published by the Director under section 1360 for the area in which such property or structure is located.'.

SEC. 13. CONSIDERATIONS IN DETERMINING CHARGEABLE PREMIUM RATES.

Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015(b)) is amended--

- (1) in subsection (a), by striking `, after consultation with' and all that follows through `by regulation' and inserting `prescribe, after providing notice';
- (2) in subsection (b)--
 - (A) in paragraph (1), by striking the period at the end and inserting a semicolon;
 - (B) in paragraph (2), by striking the comma at the end and inserting a semicolon;
 - (C) in paragraph (3), by striking `, and' and inserting a semicolon;
 - (D) in paragraph (4), by striking the period and inserting `; and'; and
 - (E) by adding at the end the following:
 - `(5) adequate, on the basis of accepted actuarial principles, to cover the average historical loss year obligations incurred by the National Flood Insurance Fund.'; and
 - (3) by adding at the end the following:
 - `(h) Rule of Construction- For purposes of this section, the calculation of an `average historical loss year' includes catastrophic loss years.'

SEC. 14. RESERVE FUND.

Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by inserting after section 1310 the following:

`SEC. 1310A. RESERVE FUND.

- `(a) In General- In carrying out the flood insurance program authorized by this chapter, the Director shall establish in the Treasury of the United States a National Flood Insurance Reserve Fund (in this section referred to as the `Reserve Fund') which shall--
 - `(1) be an account separate from any other accounts or funds available to the Director; and
 - `(2) be available for meeting the expected future obligations of the flood insurance program.
- `(b) Reserve Ratio- Subject to the phase-in requirements under subsection (d), the Reserve Fund shall maintain a balance equal to--
 - `(1) 1 percent of the sum of the total potential loss exposure of all outstanding flood insurance policies in force in the prior fiscal year; or
 - `(2) such higher percentage as the Director determines to be appropriate, taking into consideration any circumstance that may raise a significant risk of substantial future losses to the Reserve Fund.
- `(c) Maintenance of Reserve Ratio-

- ˆ (1) IN GENERAL- The Director shall have the authority to establish, increase, or decrease the amount of aggregate annual insurance premiums to be collected for any fiscal year necessary--
 - ˆ (A) to maintain the reserve ratio required under subsection (b); and
 - ˆ (B) to achieve such reserve ratio, if the actual balance of such reserve is below the amount required under subsection (b).
- ˆ (2) CONSIDERATIONS- In exercising the authority granted under paragraph (1), the Director shall consider--
 - ˆ (A) the expected operating expenses of the Reserve Fund;
 - ˆ (B) the insurance loss expenditures under the flood insurance program;
 - ˆ (C) any investment income generated under the flood insurance program; and
 - ˆ (D) any other factor that the Director determines appropriate.
- ˆ (3) LIMITATION- In exercising the authority granted under paragraph (1), the Director may not establish, increase, or decrease the amount of aggregate annual insurance premiums to be collected for any fiscal year in excess of any amount necessary--
 - ˆ (A) to maintain the reserve ratio required under subsection (b); and
 - ˆ (B) to achieve such reserve ratio, if the actual balance of such reserve is below the amount required under subsection (b).
- ˆ (d) Phase-In Requirements- The phase-in requirements under this subsection are as follows:
 - ˆ (1) For fiscal year 2007, the reserve ratio shall be equal to not less than 10 percent of the reserve ratio required under subsection (b).
 - ˆ (2) For fiscal year 2008, the reserve ratio shall be equal to not less than 20 percent of the reserve ratio required under subsection (b).
 - ˆ (3) For fiscal year 2009, the reserve ratio shall be equal to not less than 30 percent of the reserve ratio required under subsection (b).
 - ˆ (4) For fiscal year 2010, the reserve ratio shall be equal to not less than 40 percent of the reserve ratio required under subsection (b).
 - ˆ (5) For fiscal year 2011, the reserve ratio shall be equal to not less than 50 percent of the reserve ratio required under subsection (b).
 - ˆ (6) For fiscal year 2012, the reserve ratio shall be equal to not less than 60 percent of the reserve ratio required under subsection (b).
 - ˆ (7) For fiscal year 2013, the reserve ratio shall be equal to not less than 70 percent of the reserve ratio required under subsection (b).
 - ˆ (8) For fiscal year 2014, the reserve ratio shall be equal to not less than 80 percent of the reserve ratio required under subsection (b).
 - ˆ (9) For fiscal year 2015, the reserve ratio shall be equal to not less than 90 percent of the reserve ratio required under subsection (b).

`(e) Limitation on Reserve Ratio- In any given fiscal year, if the Director determines that attaining the reserve ratio required under subsection (b) would have serious negative consequences to the flood insurance program, the Director shall submit a report to Congress that--

- `(1) describes and details the specific concerns of the Director regarding such consequences;
- `(2) demonstrates how such consequences would harm the long-term financial soundness of the flood insurance program; and
- `(3) indicates the maximum attainable reserve ratio for that particular fiscal year.'

SEC. 15. REPAYMENT PLAN FOR BORROWING AUTHORITY.

Section 1309 of the National Flood Insurance Act of 1968 (42 U.S.C. 4016) is amended by adding at the end the following:

`(c) Any funds borrowed by the Director under the authority established in subsection (a) shall include a schedule for repayment of such amounts which shall be transmitted to the--

- `(1) Secretary of the Treasury;
- `(2) Committee on Banking, Housing, and Urban Affairs of the Senate; and
- `(3) Committee on Financial Services of the House of Representatives.

`(d) In addition to the requirement under subsection (c), in connection with any funds borrowed by the Director under the authority established in subsection (a), the Director, beginning 6 months after the date on which such borrowed funds are issued, and continuing every 6 months thereafter until such borrowed funds are fully repaid, shall submit a report on the progress of such repayment to the--

- `(1) Secretary of the Treasury;
- `(2) Committee on Banking, Housing, and Urban Affairs of the Senate; and
- `(3) Committee on Financial Services of the House of Representatives.'

SEC. 16. 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 the Director, or the designee thereof, and 11 additional members to be appointed by the Director or the designee of the Director, who shall be--

- (A) the Under Secretary of Commerce for Oceans and Atmosphere (or the designee thereof);

- (B) a member of recognized surveying and mapping professional associations and organizations;
- (C) a member of recognized professional engineering associations and organizations;
- (D) a member of recognized professional associations or organizations representing flood hazard determination firms;
- (E) a representative of the United States Geological Survey;
- (F) a representative of the Office of Management and Budget;
- (G) a representative of recognized professional associations or organizations representing State geographic information;
- (H) a representative of State national flood insurance coordination offices;
- (I) a representative of the Corps of Engineers;
- (J) the Secretary of the Interior (or the designee thereof);
- and
- (K) the Secretary of Agriculture (or the designee thereof).

(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.

(c) **Duties-** The Council shall--

- (1) make recommendations to the Director on how to improve in a cost-effective manner the accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps;
- (2) recommend to the Director mapping standards and guidelines for flood insurance rate maps; and
- (3) submit an annual report to the Director 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 17;
 - (C) a summary of recommendations made by the Council to the Director, including--
 - (i) performance metrics and milestones to effectively and efficiently map flood risk areas in the United States;
 - (ii) procedures for delegating mapping activities to State and local government mapping partners; and
 - (iii) establishing standards for data quality, data currency, and data eligibility; and
 - (D) recommendations for private contractors to carry out the recommendations of the Council.

(d) 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').

(e) 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 OMB Circular A-16).

(f) Compensation- Members of the Council shall receive no additional compensation by reason of their service on the Council.

(g) 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 Director, or a person designated by the Director, shall request and coordinate the initial meeting of the Council.

(h) Officers- The Chairperson may appoint officers to assist in carrying out the duties of the Council under subsection (c).

(i) Staff of FEMA- Upon the request of the Chairperson, the Director may detail, on a nonreimbursable basis, personnel of the Federal Emergency Management Agency to assist the Council in carrying out its duties.

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

(k) Termination- The Council shall terminate 5 years after the date of enactment of this Act.

SEC. 17. NATIONAL FLOOD MAPPING PROGRAM.

(a) Reviewing, Updating, and Maintaining Maps- The Director, in coordination with the Technical Mapping Advisory Council established under section 16, shall establish a program under which the Director shall review, update, and maintain National Flood Insurance Program rate maps in accordance with this section.

(b) Mapping-

(1) IN GENERAL- In carrying out the program established under subsection (a), the Director shall--

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

(i) all areas located within the 500-year floodplain that have not previously been identified, including coastal areas located in the United States;

(ii) areas of residual risk that have not previously been identified, including areas that are located behind levees, dams, and other man-made structures; and

(iii) areas that could be inundated as a result of the failure of a dam, as identified under the National Dam Safety Program Act (33 U.S.C. 467 et seq.);

(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, the most accurate topography and elevation data available.

(2) MAPPING ELEMENTS- Each map updated under this section shall include the following:

(A) NEW GROUND ELEVATION DATA-

(i) IN GENERAL- New ground elevation data utilizing the newest technologies for the development of hydrologic and hydraulic modeling to support all flooding sources.

(ii) DEFINITION- As used in clause (i), the term 'new ground elevation data' means data that meets the requirements of Appendix A, Guidance for Aerial Mapping and Surveying, of the Federal Emergency Management Agency's 'Guidelines and Specifications for Flood Hazard Mapping Partners' as in effect on the date of enactment of this Act.

(B) DATA ON A WATERSHED BASIS- Delineation of 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.

(C) VERTICAL POSITIONING- Vertical positioning of the lowest floor and lowest adjacent grade coordinate elevation data in the national inventory of structures.

(3) OTHER INCLUSIONS- In updating maps under this section, the Director 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 Director; and

(C) a description of any hazard that might impact flooding, including, as determined by the Director--

(i) land subsidence and coastal erosion areas;

(ii) sediment flow areas;

(iii) mud flow areas;

(iv) ice jam areas; and

(v) areas on coasts and inland that are subject to the failure of structural protective works, such as levees, dams, and floodwalls.

(c) Standards- In updating and maintaining maps under this section, the Director 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 Director, in conjunction with State and local governments, in developing maps for communities with similar flood risks, as determined by the Director; and

(2) publish maps in a format that is--

(A) digital;

(B) geospatial data-compliant, as determined in accordance with the standards for such compliance established by the Open Geospatial Consortium; and

(C) compliant with the North American Vertical Datum of 1988.

(d) Authorization of Appropriations- There is authorized to be appropriated to the Director to carry out this section \$400,000,000 for each of fiscal years 2007 through 2012.

SEC. 18. REMOVAL OF LIMITATION ON STATE CONTRIBUTIONS FOR UPDATING FLOOD MAPS.

Section 1360(f)(2) of the National Flood Insurance Act of 1968 (42 U.S.C. 4101(f)(2)) is amended by striking ` , but which may not exceed 50 percent of the cost of carrying out the requested revision or update'.

SEC. 19. NONMANDATORY PARTICIPATION.

(a) Nonmandatory Participation in National Flood Insurance Program for 500-Year Floodplain- Any area located within the 500-year floodplain shall not be subject to the mandatory purchase requirements of sections

102 or 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a, 4106).

(b) Notice-

(1) BY DIRECTOR- In carrying out the National Flood Insurance Program, the Director shall provide notice to any community located in an area within the 500-year floodplain.

(2) TIMING OF NOTICE- The notice required under paragraph (1) shall be made not later than 6 months after the date of completion of the initial mapping of the 500-year floodplain, as required under section 17.

(3) LENDER REQUIRED NOTICE-

(A) REGULATED LENDING INSTITUTIONS- Each Federal or State entity for lending regulation (after consultation and coordination with the Federal Financial Institutions Examination Council) shall, by regulation, require regulated lending institutions, as a condition of making, increasing, extending, or renewing any loan secured by property located in an area within the 500-year floodplain, 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 that such property is located in an area within the 500-year floodplain, in a manner that is consistent with and substantially identical to the notice required under section 1364(a)(1) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104a(a)(1)).

(B) FEDERAL OR STATE AGENCY LENDERS- Each Federal or State agency lender shall, by regulation, require notification in the same manner as provided under subparagraph (A) with respect to any loan that is made by a Federal or State agency lender and secured by property located in an area within the 500-year floodplain.

(C) PENALTY FOR NONCOMPLIANCE- Any regulated lending institution or Federal or State agency lender that fails to comply with the notice requirements established by this paragraph shall be subject to the penalties prescribed under section 102(f)(5) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(5)).

SEC. 20. NOTICE OF FLOOD INSURANCE AVAILABILITY UNDER RESPA.

Section 5(b) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(b)) is amended--

- (1) in paragraph (4), by striking `; and' and inserting a semicolon;
- (2) in paragraph (5), by striking the period and inserting `; and'; and
- (3) by adding at the end the following:

^ (6) an explanation of flood insurance and the availability of flood insurance under the National Flood Insurance Program, whether or not the real estate is located in an area having special flood hazards.'.

SEC. 21. TESTING OF NEW FLOODPROOFING TECHNOLOGIES.

(a) Permissible Testing- A residential structure built for the purpose of testing a new flood proofing technology, as described in subsection (b), in any State or community that receives mitigation assistance under section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) may not be construed to be in violation of any flood risk mitigation plan developed by that State or community and approved by the Director of the Federal Emergency Management Agency.

(b) Conditions on Testing- Testing permitted under subsection (a) shall--

(1) be performed on an uninhabited residential structure;

(2) require dismantling of the structure at the conclusion of such testing; and

(3) require that all costs associated with such testing and dismantling be covered by the individual or entity conducting the testing, or on whose behalf the testing is conducted.

(c) Rule of Construction- Nothing in this section shall be construed to alter, limit, or extend the availability of flood insurance to any structure that may employ, utilize, or apply any technology tested under subsection (b).

SEC. 22. PARTICIPATION IN STATE DISASTER CLAIMS MEDIATION PROGRAMS.

Chapter I of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by inserting after section 1313 the following:

^ SEC. 1314. PARTICIPATION IN STATE DISASTER CLAIMS MEDIATION PROGRAMS.

^ (a) Requirement to Participate- In the case of the occurrence of a major disaster, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122) that may have resulted in flood damage under the flood insurance program established under this chapter and other personal lines residential property insurance coverage offered by a State regulated insurer, upon request made by the insurance commissioner of a State (or such other official responsible for regulating the business of insurance in the State) for the participation of representatives of the Director in a program sponsored by such State for nonbinding mediation of insurance claims resulting from a major disaster,

the Director shall cause representatives of the flood insurance program to participate in such a State program where claims under the flood insurance program are involved to expedite settlement of flood damage claims resulting from such disaster.

`(b) Extent of Participation- In satisfying the requirements of subsection (a), the Director shall require that each representative of the Director--

`(1) be certified for purposes of the flood insurance program to settle claims against such program resulting from such disaster in amounts up to the limits of policies under such program;

`(2) attend State-sponsored mediation meetings regarding flood insurance claims resulting from such disaster at such times and places as may be arranged by the State;

`(3) participate in good faith negotiations toward the settlement of such claims with policyholders of coverage made available under the flood insurance program; and

`(4) finalize the settlement of such claims on behalf of the flood insurance program with such policyholders.

`(c) Coordination- Representatives of the Director shall at all times coordinate their activities with insurance officials of the State and representatives of insurers for the purposes of consolidating and expediting settlement of claims under the national flood insurance program resulting from such disaster.

`(d) Qualifications of Mediators- Each State mediator participating in State-sponsored mediation under this section shall be--

`(1)(A) a member in good standing of the State bar in the State in which the mediation is to occur with at least 2 years of practical experience; and

`(B) an active member of such bar for at least 1 year prior to the year in which such mediator's participation is sought; or

`(2) a retired trial judge from any United States jurisdiction who was a member in good standing of the bar in the State in which the judge presided for at least 5 years prior to the year in which such mediator's participation is sought.

`(e) Mediation Proceedings and Documents Privileged- As a condition of participation, all statements made and documents produced pursuant to State-sponsored mediation involving representatives of the Director shall be deemed privileged and confidential settlement negotiations made in anticipation of litigation.

`(f) Liability, Rights, or Obligations Not Affected- Participation in State-sponsored mediation, as described in this section does not--

`(1) affect or expand the liability of any party in contract or in tort;
or

`(2) affect the rights or obligations of the parties, as established--

`(A) in any regulation issued by the Director, including any regulation relating to a Standard Flood Insurance Policy;

`(B) under this Act; and

`(C) under any other provision of Federal law.

- ^(g) Exclusive Federal Jurisdiction- Participation in State-sponsored mediation shall not alter, change, or modify the original exclusive jurisdiction of United States courts, as set forth in this Act.
- ^(h) Cost Limitation- Nothing in this section shall be construed to require the Director or a representative of the Director to pay additional mediation fees relating to flood insurance claims associated with a State-sponsored mediation program in which such representative of the Director participates.
- ^(i) Exception- In the case of the occurrence of a major disaster that results in flood damage claims under the national flood insurance program and that does not result in any loss covered by a personal lines residential property insurance policy--
 - ^(1) this section shall not apply; and
 - ^(2) the provisions of the Standard Flood Insurance Policy under the national flood insurance program and the appeals process established under section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note) and the regulations issued pursuant to such section shall apply exclusively.
- ^(j) Representatives of the Director- For purposes of this section, the term 'representatives of the Director' means representatives of the national flood insurance program who participate in the appeals process established under section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note).'

SEC. 23. REITERATION OF FEMA RESPONSIBILITIES UNDER THE 2004 REFORM ACT.

- (a) Appeals Process- As required in section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note), the Director shall establish an appeals process through which holders of a flood insurance policy may appeal the decisions, with respect to claims, proofs of loss, and loss estimates relating to such flood insurance policy, of--
 - (1) any insurance agent or adjuster, or insurance company; or
 - (2) any employee or contractor of the Federal Emergency Management Agency.
- (b) Minimum Training and Education Requirements- The Director shall continue to work with the insurance industry, State insurance regulators, and other interested parties to implement the minimum training and education standards for all insurance agents who sell flood insurance policies, as such standards were determined by the Director in the notice published in the Federal Register on September 1, 2005 (70 Fed. Reg. 52117) pursuant to section 207 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note).
- (c) Implementation Reports-

(1) OVERALL IMPLEMENTATION OF REFORM ACT OF 2004- Not later than 3 months after the date of the enactment of this Act, the Director shall submit a report to the Congress--

(A) describing the implementation of each provision of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (Public Law 108-264; 118 Stat. 712); and

(B) identifying each regulation, order, notice, and other material issued by the Director in implementing each provision of that Act.

(2) IMPLEMENTATION OF APPEALS PROCESS-

(A) IN GENERAL- Not later than 30 days after the date of enactment of this Act, and every 30 days thereafter until final establishment of the appeals process required under section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (42 U.S.C. 4011 note), the Director shall submit a report to the Congress describing the implementation of such appeals process.

(B) CONTENT OF REPORT- Each report required under subparagraph (A) shall include--

(i) dates and descriptions of actions taken by the Director to establish the appeals process;

(ii) dates and descriptions of all communications to the Congress by the Director concerning the establishment of such process;

(iii) explanations of any statutory or implied deadlines that have not been met; and

(iv) an estimate of when any regulation, order, notice, or other material will be issued by the Director in establishing such process.

SEC. 24. STUDIES, AUDITS, AND REPORTS.

(a) GAO Study on Write Your Own Policies- Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that examines--

(1) the current fees and expenses paid from premium income earned under the National Flood Insurance Program to cover the cost of selling, servicing, and processing of claims in connection with National Flood Insurance Program policies, as well as floodplain management and mitigation activities, by--

(A) companies that are authorized by the Director to provide Write Your Own policies;

(B) National Flood Insurance Program contractors; and

(C) the Federal Emergency Management Agency;

(2) in detail--

- (A) each of the 5 other lines of insurance the National Flood Insurance Program currently uses to evaluate the amount of reimbursement paid to authorized providers of Write Your Own policies; and
 - (B) the expenses incurred by such providers in administering the National Flood Insurance Program on behalf of the Federal Government;
 - (3) the cost difference for authorized providers of Write Your Own policies between--
 - (A) flood insurance policies at origination and flood insurance policies up for renewal; and
 - (B) flood insurance policies written for policyholders who are required to purchase flood insurance and flood insurance policies written for those policyholders who are not required to purchase flood insurance;
 - (4) the similarities and differences in the expenses incurred in administering the National Flood Insurance Program and those incurred in administering other lines of Federal, State, and private company insurance;
 - (5) in detail what actions the Director is taking to ensure that authorized providers of Write Your Own policies are only being reimbursed for their expenses in providing such policies;
 - (6) in detail the additional benefits authorized providers of Write Your Own policies receive by not underwriting flood risk, including the ability to market and sell other lines of insurance; and
 - (7) the feasibility of using a competitive bidding process, or other alternative, to select 1 or more private insurance companies to sell and service National Flood Insurance Program policies and process claims for fees agreed upon by contract with the Director.
- (b) GAO Audit- Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall audit the financial transactions of the National Flood Insurance Program relating to the consequences of Hurricane Katrina and other hurricanes of the 2005 season, including any transactions--
- (1) for making any payments required under section 1334 of the National Flood Insurance Act of 1968 (42 U.S.C. 4054);
 - (2) to pay reinsurance claims under the excess loss reinsurance coverage provided under section 1335 of that Act (42 U.S.C. 4055);
 - (3) to repay to the Secretary of the Treasury such sums as may have been borrowed from the Secretary in accordance with the authority provided in section 1309 of that Act (42 U.S.C. 4016);
 - (4) to the extent approved in appropriations Acts, to pay any administrative expenses of the National Flood Insurance Program;
 - (5) for the purposes specified in section 1310(d) of that Act (42 U.S.C. 4017(d)) under the conditions provided in such section;
 - (6) for carrying out the program under section 1315(b) of that Act (42 U.S.C. 4022(b));

(7) for transfers to the National Flood Mitigation Fund, but only to the extent provided in section 1367(b)(1) of that Act (42 U.S.C. 4104d(b)(1));

(8) for financial assistance under section 1361A of that Act (42 U.S.C. 4102a) to a State or community for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 1361A(i) of that Act; and

(9) that resulted in amounts being credited to the National Flood Insurance Program, including amounts--

(A) borrowed in accordance with the authority provided in section 1309 of that Act (42 U.S.C. 4016);

(B) collected in connection with the excess loss reinsurance coverage provided under section 1335 of that Act (42 U.S.C. 4055);

(C) advanced to the National Flood Insurance Program from appropriations in order to maintain the National Flood Insurance Fund established in section 1310 of that Act (42 U.S.C. 4017) in an operative condition adequate to meet the liabilities of the Program;

(D) earned on investments;

(E) required to be paid to the Director under section 1308(d) of that Act (42 U.S.C. 4015(d)); and

(F) received from any other operation or activity performed under that Act.

(c) Report on Expanding the National Flood Insurance Program- Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on--

(1) the number of flood insurance policy holders currently insuring--

(A) a residential structure up to the maximum available coverage amount, as established in section 61.6 of title 44, Code of Federal Regulations, of--

(i) \$250,000 for the structure; and

(ii) \$100,000 for the contents of such structure; or

(B) a commercial structure up to the maximum available coverage amount, as established in section 61.6 of title 44, Code of Federal Regulations, of \$500,000;

(2) the increased losses the National Flood Insurance Program would have sustained during the 2004 and 2005 hurricane season if the National Flood Insurance Program had insured all policyholders up to the maximum conforming loan limit for fiscal year 2006 of \$417,000, as established under section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2));

(3) the availability in the private marketplace of flood insurance coverage in amounts that exceed the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations; and

(4) what effect, if any--

(A) raising the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations, would have on the ability of private insurers to continue providing flood insurance coverage; and

(B) reducing the current limits of coverage amounts established in section 61.6 of title 44, Code of Federal Regulations, would have on the ability of private insurers to provide sufficient flood insurance coverage to effectively replace the current level of flood insurance coverage being provided under the National Flood Insurance Program.

(d) Report of the Director on Activities Under the National Flood Insurance Program-

(1) IN GENERAL- The Director shall, on an annual basis, submit a full report on the operations, activities, budget, receipts, and expenditures of the National Flood Insurance Program for the preceding 12-month period to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) TIMING- Each report required under paragraph (1) shall be submitted to the committees described in paragraph (1) not later than 3 months following the end of each fiscal year.

(3) CONTENTS- Each report required under paragraph (1) shall include--

(A) the current financial condition and income statement of the National Flood Insurance Fund established under section 1310 of the National Flood Insurance Act of 1968 (42 U.S.C. 4017), including--

(i) premiums paid into such Fund;

(ii) policy claims against such Fund; and

(iii) expenses in administering such Fund;

(B) the number and face value of all policies issued under the National Flood Insurance Program that are in force;

(C) a description and summary of the losses attributable to repetitive loss structures;

(D) a description and summary of all losses incurred by the National Flood Insurance Program due to--

(i) hurricane related damage; and

(ii) nonhurricane related damage;

(E) the amounts made available by the Director for mitigation assistance under section 1366(e)(5) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c(e)(5)) for the purchase of properties substantially damaged by

flood for that fiscal year, and the actual number of flood damaged properties purchased and the total cost expended to purchase such properties;

(F) the estimate of the Director as to the average historical loss year, and the basis for that estimate;

(G) the estimate of the Director as to the maximum amount of claims that the National Flood Insurance Program would have to expend in the event of a catastrophic year;

(H) the average--

(i) amount of insurance carried per flood insurance policy;

(ii) premium per flood insurance policy; and

(iii) loss per flood insurance policy; and

(I) the number of claims involving damages in excess of the maximum amount of flood insurance available under the National Flood Insurance Program and the sum of the amount of all damages in excess of such amount.

(e) GAO Analysis and Evaluation of the National Flood Insurance Program-

(1) IN GENERAL- Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report evaluating the purposes of the National Flood Insurance Program to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(2) CONTENTS- The report required under paragraph (1) shall include--

(A) an analysis of whether the National Flood Insurance Program has fulfilled its purpose, as set forth in section 1302 of the National Flood Insurance Act of 1968 (42 U.S.C. 4001);

(B) an examination of whether the National Flood Insurance Program has unduly burdened or benefitted taxpayers; and

(C) any recommendations for legislative or administrative action that the Comptroller General determines are necessary to ensure that the National Flood Insurance Program operates in a more effective and efficient manner, including whether the National Flood Insurance Program should be reorganized into another Federal agency.

(f) GAO Study- Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on the--

(1) composition of the remaining pre-FIRM structures that are explicitly receiving discounted premium rates under section 1307 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104),

including the historical basis for the receipt of such subsidy and whether such subsidy has outlasted its purpose;

- (2) number and fair market value of such structures;
- (3) respective income level of each owner of such structure;
- (4) number of times each such structure has been sold since 1968, including specific dates, sales price, and any other information the Secretary determines appropriate;
- (5) total losses incurred by such structures since the establishment of the National Flood Insurance Program compared to the total losses incurred by all structures that are charged a nondiscounted premium rate;
- (6) total cost of foregone premiums since the establishment of the National Flood Insurance Program, as a result of the subsidies provided to such structures;
- (7) annual cost to the taxpayer, as a result of the subsidies provided to such structures;
- (8) the premium income collected and the losses incurred by the National Flood Insurance Program as a result of such explicitly subsidized structures compared to the premium income collected and the losses incurred by such Program as result of structures that are charged a nondiscounted premium rate, on a State-by-State basis; and
- (9) the most efficient way to eliminate the subsidy to such structures.

(g) GAO Study on Direct Purchase in Nonparticipating Communities- Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, on the feasibility of allowing individuals, residing in communities not currently participating in the National Flood Insurance Program, to purchase flood insurance from the National Flood Insurance Program on an actuarially sound basis.

Calendar No. 498

109th CONGRESS
2d Session
S. 3589
[Report No. 109-271]
A BILL

To amend the National Flood Insurance Act of 1968, to restore the financial solvency of the flood insurance fund, and for other purposes.

June 28, 2006

Read twice and placed on the calendar

END