

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 13, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: March 13, 2019, Full Committee Hearing Entitled: “Preparing for the Storm: Reauthorization of the National Flood Insurance Program”

This Committee on Financial Services will hold a hearing entitled, “Preparing for the Storm: Reauthorization of the National Flood Insurance Program” on Wednesday, March 13, 2019 at 10:00 a.m. in Room 2128 Rayburn House Office Building.

Panel 1

- The Honorable Sean P. Duffy, Member of Congress
- The Honorable Garret Graves, Member of Congress
- The Honorable Blaine Luetkemeyer, Member of Congress
- The Honorable Frank Pallone, Member of Congress
- The Honorable Bill Pascrell, Member of Congress
- The Honorable Steve Scalise, Member of Congress

Panel 2

- Maria Cox Lamm, South Carolina Department of Natural Resources, on behalf of the Association of State Flood Plain Managers
- Christopher Heidrick, Heidrick & Company Insurance and Risk Management Services, LLC, on behalf of the Independent Insurance Agents and Brokers of America
- Velma Smith, Senior Officer, The Pew Charitable Trusts
- Mabel Guzmán, Broker, @properties, on behalf of the National Association of Realtors
- Collin O'Mara, President and CEO, National Wildlife Federation, on behalf of the SmarterSafer Coalition
- Raymond J. Lehmann, Director of Finance, Insurance and Trade Policy, R Street Institute

Additional witnesses may be added.

Background

Prior to 1950, flood insurance was a peril often included in standard homeowners' insurance policies. However, in response to an increasing frequency and severity in flood-related losses in the 1950s, insurance companies began excluding flood insurance coverage

and selling it separately. By the 1960s, widespread flooding along the Mississippi River caused most private insurers to flee the business of flood insurance altogether, leaving many consumers with virtually no access to private flood insurance.¹ The lack of availability of flood insurance for consumers left them vulnerable in the event of a flood, and also left taxpayers vulnerable to bearing the costs of flood damage through post-disaster relief in the case of a flood event.

In direct response to this private market failure, the National Flood Insurance Program (NFIP) was created in 1968 with the passage of the National Flood Insurance Act (NFIA). In doing so, Congress determined that “as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures”² and that transferring the costs of private property flood losses from the general taxpayer to individuals in the floodplains through premiums would ease the strain on the nation’s limited disaster resources. Congress also passed the Flood Disaster Protection Act of 1973 (FDPA) that requires most property owners in a designated Special Flood Hazard Area to purchase flood insurance.³

The last long-term reauthorization of the NFIP occurred when Congress passed the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12), which was subsequently amended by the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA). Since the end of fiscal year (FY) 2017, the NFIP has been reauthorized ten times and has experienced brief lapses. According to the National Association of Realtors, an estimated 40,000 home sales are lost or interrupted every month that the NFIP’s authority lapses. The NFIP’s authorization is currently set to expire on May 31, 2019. In the event of a lapse, NFIP will be unable to enter into new flood insurance contracts, which will lead to widespread market instability due to the stalling of mortgage processing for homes that are statutorily required to have flood insurance.

Several Members of Congress have put forward legislative proposals to reauthorize the NFIP and make programmatic reforms to promote affordability, protect policyholders, and improve flood mapping and floodplain management.

Overview of the NFIP

The NFIP is administered by the Federal Emergency Management Agency (FEMA) through its Federal Insurance & Mitigation Administration (FIMA). The NFIP was designed to serve two interrelated goals: (1) provide access to primary flood insurance and (2) reduce flood risk through the adoption of floodplain management standards.⁴ The NFIP

¹ See Testimony of Teresa D. Miller, Commissioner, Pennsylvania Insurance Department, House Financial Services Committee hearing entitled, “How to Create a More Robust and Private Flood Insurance Marketplace” on January 13, 2016, *available at*:

https://www.naic.org/documents/government_relations_160113_testimony_private_flood_insurance.pdf.

² See 42 U.S.C. §4001(a).

³ For example, the mandatory purchase requirement only extends to the structure, although policyholders can purchase contents coverage if they choose. The requirement also only reaches those with a federally backed mortgage, so property owners who have paid off their mortgage or who have obtained a mortgage without federal backing are not affected.

⁴ See 42 U.S.C. §4001 et seq.

advances these goals by offering primary flood insurance exclusively for properties in communities that adopt minimum floodplain management standards under FEMA regulations.⁵ The NFIP also administers the Community Rating System (CRS), which is a voluntary incentive program that recognizes communities for implementing floodplain management practices that exceed the NFIP's minimum requirements and, in exchange, FIMA offers reduced flood insurance premiums to policyholders.

Today, the NFIP is the principal provider of primary flood insurance in the U.S., covering over 5 million households and businesses across the country for a total of over \$1.3 trillion in flood insurance coverage.⁶ As of the end of FY 2018, approximately 22,324 communities participate in the NFIP, covering an estimated 93 percent of the U.S. population. According to FEMA, the NFIP saves the nation an estimated \$1.87 billion annually in flood losses avoided because of the NFIP's building and floodplain management regulations.

In 1983, FEMA created the Write Your Own (WYO) Program in an effort to: increase the NFIP's policy base and geographic distribution of policies; improve service to NFIP policyholders through infusion of insurance industry knowledge and capacity; and, provide the insurance industry with direct operating experience with flood insurance. This WYO Program operates as a partnership between FEMA and participating property and casualty insurance companies that are compensated to write and service NFIP policies. The WYOs assume none of the risk by participating in this program. FEMA retains all of the insurance risk and underwrites any losses. Currently, approximately 60 different companies administer about 87 percent of NFIP policies through the WYO Program.⁷ The remainder of NFIP's policies are provided through the Direct Program, which is operated by a government contractor and performs the same basic functions as a WYO company.

The NFIP offers a Standard Flood Insurance Policy (SFIP) for properties in participating communities within a Special Flood Hazard Area (SFHA).⁸ By virtue of the mandatory purchase required by law, most property owners within the SFHA are required to purchase flood insurance. Many of the SFIP's policy terms are set in statute. The maximum coverage amount for building coverage is \$250,000 for single-family homes, and \$500,000 for multi-family residential properties, and non-residential properties including commercial properties. The maximum coverage amount for contents only is \$100,000.⁹ If the SFIP's maximum coverage amounts are insufficient to cover the full value of the property, policyholders may have the option of obtaining excess flood insurance in the private market.

⁵ *Id.*

⁶ See Policy Statistics, National Flood Insurance Program, current as of September 30, 2018, *available at*: <http://bsa.nfipstat.fema.gov/reports/1011.htm>.

⁷ See Facts and Statistics, Flood Insurance, Insurance Information Institute, *available at*: <https://www.iii.org/fact-statistic/facts-statistics-flood-insurance>.

⁸ National Flood Insurance Program Dwelling Form, Standard Flood Insurance Policy, October 2015, *available at*: https://www.fema.gov/media-library-data/1449522308118-6752c210f65aed326a9ddf4a0ddaca1f/F-122_Dwelling_SFIP_102015.pdf.

⁹ FEMA Insurance Manual, effective October 1, 2016, *available at*: <https://www.fema.gov/media-library/assets/documents/127010>.

The NFIP also offers coverage for properties that are not within a SFHA, usually as a Preferred Risk Policy (PRP). PRPs include similar coverage but at discounted rates in accordance with their lower risk profile. If a property has a significant loss history, that policyholder may become ineligible for a PRP and would need to purchase a SFIP that is commensurate with the flood risk.

The NFIP's Financial Status

The NFIP is largely self-funded through insurance premiums collected from policy holders. Policyholders are also assessed a number of surcharges and other fees. In FY 2018, policyholders paid \$382 million in surcharges, \$188.162 million in federal policy fees, and \$496.82 million in reserve fund assessments.¹⁰ A portion of these premiums, fees, surcharges, and assessments goes towards the cost of flood mapping and floodplain management. A large portion also goes to paying interest on debt of the NFIP.

Congress designed the NFIP as a program that would operate on a cash flow basis, borrowing from the Treasury in bad years and returning funds to the Treasury in good years. The NFIP was largely self-supporting in this way from 1986 until 2005, but due to extraordinary losses incurred as a result of hurricanes Katrina, Rita, and Wilma in 2005, and then Superstorm Sandy in 2012 and Hurricane Matthew in 2016, the program currently carries a debt of \$20.5 billion.¹¹ It is also important to note that a significant portion of the NFIP's debt accrued as a result of Hurricane Katrina (\$19 billion) could not possibly have been properly accounted for in NFIP's risk modeling; specifically, the U.S. Army Corp of Engineers took responsibility for engineering and design failures in the levees that should have been able to provide far better protection for New Orleans in the face of Katrina.¹²

Taxpayers are not on the hook for this debt and receive millions of dollars in interest payments every year (currently approximately \$400 million annually or a total of \$4.2 billion since 2005) at the expense of policyholders. In 2017, following a proposal submitted by OMB Director Mick Mulvaney, Congress passed legislation to partially forgive \$16 billion of the NFIP's debt of \$30.4 billion, after the NFIP's debt ballooned following Hurricanes Harvey, Irma and Maria and other historic flooding that year.¹³

Affordability Challenges

In 2018, FEMA submitted its congressionally mandated Affordability Framework demonstrating, among other things, that low-income homeowners and renters face significant affordability challenges. The report documents that those that are least able to afford higher premiums tend to live in the highest flood hazard areas writing, "generally, incomes are higher outside the SFHA than they are inside the SFHA. The median household

¹⁰ Federal Insurance and Mitigation Administration report, *The Watermark*, FY18 Volume 4.

¹¹ *Id.*

¹² Katrina Report Blames Levees, June 2006, CBS News, available at: <http://www.cbsnews.com/news/katrina-report-blames-levees/>

¹³ Letter from the Office of Management and Budget Director Mulvaney, October 4, 2017, available at: <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/Letters/Letter%20regarding%20additional%20funding%20and%20reforms%20to%20address%20impacts%20of%20recent%20natural%20disasters.pdf>.

income for residential policyholders is \$82,000, although it is substantially lower in the SFHA than outside the SFHA.”¹⁴ Further, FEMA found that “the combination of higher premiums and lower incomes in the SFHA creates affordability pressure on households.”¹⁵

Draft Legislation

- **Waters_009** is a discussion draft that would reauthorize the NFIP through September 30, 2024 and address a number of affordability issues such as: 1) forgiving the NFIP’s debt; 2) creating a 5-year demonstration for means-tested assistance to low-income policyholders; 3) reducing fees and surcharges; 4) revising the NFIP’s coverage limits; 5) enabling policyholders to pay premiums in monthly installments; and 6) creating a state revolving loan fund modeled after legislation previously introduced by Rep. Crist.
- **Maj_Mitigation** is a discussion draft that would make several improvements to floodplain management and mitigation such as: 1) raising the amount of funds available under Increased Cost of Compliance program and expanding the eligible mitigation activities to include the cost of acquisitions, among others; 2) granting the Administrator discretion to consider the extent to which communities are working to remedy problems with repeatedly flooded areas when administering mitigation assistance; 3) granting credits for alternative forms of mitigation, allowing coverage for coops and community-based policies; and 5) authorizing and flood plain management activities.
- **Maj_Mapping** is a discussion draft that would reauthorize the flood mapping program and provide funding to support flood mapping. It would also make several improvements to the mapping program such as: 1) requiring the most up-to-date technology, and more advanced and granular flood maps; 2) improving the process for policyholders and communities to appeal FEMA’s mapping decisions; and 3) creating new flood map zones for levee-impacted and for agricultural areas.
- **Velazq_035** is a bill that would make numerous improvements to the claims process drawing on the lessons learned from Superstorm Sandy. The bill would ensure that policyholders better understand the terms of their flood insurance policies and improve the appeals and litigation process for consumers

¹⁴ An Affordability Framework for the National Flood Insurance Program, Department of Homeland Security, April 2018, available at: <https://www.fema.gov/media-library-data/1524056945852-e8db76c696cf3b7f6209e1adc4211af4/Affordability.pdf>.

¹⁵ *Id.*