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Private Flood Insurance and the National Flood Insurance Program

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Summary

The National Flood Insurance Program (NFIP) is the main source of primary flood insurance coverage in the United States, collecting $3.5 billion in premiums for over five million flood insurance policies. This is in contrast to the majority of other property and casualty risks, such as damage from fire or accidents, which are covered by a broad array of private insurance companies. One of the primary reasons behind the creation of the NFIP in 1968 was the withdrawal by private insurers from providing flood insurance coverage, leaving flood victims largely reliant on federal disaster assistance to recover after a flood. While private insurers have taken on relatively little flood risk, they have been involved in the administration of the NFIP through sales and servicing of policies and claims.

In recent years, private insurers have expressed increased interest in providing flood coverage. Advances in the analytics and data used to quantify flood risk along with increases in capital market capacities may allow private insurers to take on flood risks that they shunned in the past. Private flood insurance may offer some advantages over the NFIP, including more flexible flood polices, integrated coverage with homeowners insurance, or lower-cost coverage for some consumers. Private marketing might also increase the overall amount of flood coverage purchased, reducing the amount of extraordinary disaster assistance necessary to be provided by the federal government. Increased private coverage could reduce the overall financial risk to the NFIP, reducing the amount of NFIP borrowing necessary after major disasters.

Increasing private insurance, however, may have some downsides compared to the NFIP. Private coverage would not be guaranteed to be available to all floodplain residents, unlike the NFIP, and consumer protections could vary in different states. The role of the NFIP has historically been broader than just providing insurance. As currently authorized, the NFIP also encompasses social goals to provide flood insurance in flood-prone areas to property owners who otherwise would not be able to obtain it, and to reduce government's cost after floods. Through flood mapping and mitigation efforts, the NFIP has tried to reduce the future impact of floods, and it is unclear how effectively the NFIP could play this broader role if private insurance became a large part of the flood marketplace. Increased private insurance could also have an impact on the subsidies that are provided for some consumers through the NFIP.

The 2012 reauthorization of the NFIP (Title II of P.L. 112-141) included provisions encouraging private flood insurance; however, various barriers have remained. Legislation passed the House in the 114th Congress (H.R. 2901) which was intended to loosen requirements on private flood insurance, but it was not taken up by the Senate before the end of the 114th Congress.

The NFIP is currently operating under a short-term reauthorization until July 31, 2018. A bill for longer-term reauthorization (H.R. 2874) passed the House in November 2017. Three bills (S. 1313, S. 1368, and S. 1571) have been introduced in the Senate, but none have been acted on by the full Senate. H.R. 2874 includes several provisions intended to promote private flood insurance. S. 1313 mirrors some of these provisions, while the other Senate bills have fewer provisions promoting private flood insurance.

This report describes the current role of private insurers in U.S. flood insurance, and discusses barriers to expanding private sector involvement. The report considers potential effects of increased private sector involvement in the U.S. flood market, both for the NFIP and for consumers. Finally, the report outlines the provisions relevant to private flood insurance in the House and Senate NFIP reauthorization bills.

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Introduction

Congress is currently considering reauthorization of the National Flood Insurance Program (NFIP) as the 2018 hurricane season begins, while still dealing with the financial impact of the 2017 hurricane season. Total losses (insured and uninsured) for the 2017 hurricane season are estimated at a record $270.9 billion, with losses for Hurricane Harvey estimated at $126.3 billion, Hurricane Maria at $90.9 billion, and Hurricane Irma at $50.5 billion.[1] FEMA projects total NFIP claims for the three hurricanes at more than $9.7 billion.[2] The NFIP is designed to borrow money from the Treasury to cover claims for extreme events;[3] however, the 2017 losses would have pushed the program over its authorized borrowing limit. Rather than increase the borrowing limit, Congress canceled $16 billion of NFIP debt to allow the program to pay claims.[4]

Expanding the availability of private flood insurance has been seen by many as an answer to the variability of the financial position of the NFIP.[5] An increased role of private insurers could transfer more flood risk from policyholders to the private insurance sector, as opposed to transferring the risk to the federal government through the NFIP. In addition to the possible advantage to the NFIP, the increased availability of flood insurance as private companies enter the market may benefit households and businesses, as insured flood victims are likely to recover more quickly and more fully after a flood.

Private insurer interest in directly providing and underwriting flood risk has increased in recent years. Advances in the analytics and data used to quantify flood risk along with increases in capital market capacities may allow private insurers to take on flood risks that they shunned in the past. However, increasing the private sector role in providing flood insurance coverage directly to consumers may have implications for the operations and fiscal solvency of the NFIP as currently structured. Increased access to private flood insurance could provide individual policyholders with a wider choice of coverage and possibly cheaper premiums, but may also lead to variable consumer protections.

The extent to which private insurance companies participate in the U.S. flood insurance market represents an area of congressional concern. The NFIP is currently operating under a short-term reauthorization until July 31, 2018. A bill for longer-term reauthorization (H.R. 2874) passed the House in November 2017. Three bills (S. 1313, S. 1368, and S. 1571) have been introduced in the Senate, but none have been acted on by the full Senate. H.R. 2874 includes several provisions intended to promote private flood insurance. S. 1313 mirrors some of these provisions, while the other Senate bills have fewer provisions promoting private flood insurance. This report describes the current role of private insurers in U.S. flood insurance, and discusses barriers to private sector involvement. The report considers potential effects of increased private sector involvement in the

[1] Note that these figures include losses due to wind damage as well as flood damage.

[2] Email from FEMA Congressional Affairs staff, March 19, 2018. These are conservative numbers that do not include Loss Adjustment Expense (which would add approximately 5.3%), supplemental claims payments, or Increased Cost of Compliance expenditures.

[3] The NFIP was not designed to retain funding to cover claims for truly extreme events; instead, the National Flood Insurance Act of 1968 allows the program to borrow money from the Treasury for such events (42 U.S.C. §4106(a)).

[4] For more information on NFIP borrowing, see CRS Insight IN10784, *National Flood Insurance Program Borrowing Authority*, by (name redacted)

[5] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 41, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

U.S. flood market, both for the NFIP and for consumers. Finally, the report outlines the provisions relevant to private flood insurance in the House and Senate NFIP reauthorization bills.

Background

The NFIP is the main provider of primary flood insurance coverage for residential properties in the United States, providing nearly $1.28 trillion in coverage for over 5 million residential flood insurance policies. It also provides over $66 billion in coverage for non-residential properties. The program collects about $3.5 billion in annual premium revenue.[6] Nationally, over 22,000 communities in 56 states and jurisdictions participate in the NFIP.[7] The role of the federal government in flood insurance is in contrast to the majority of other property and casualty risks, such as damage from fire or accidents, which are covered by a broad array of private insurance companies. The premiums for this private insurance in 2017 totaled $556 billion, with the policies backed by nearly $2 trillion in assets held by private insurers.[8]

Objectives of the NFIP

The NFIP has two main policy goals: (1) to provide access to primary flood insurance, thereby allowing for the transfer of some of the financial risk of property owners to the federal government; and (2) to mitigate and reduce the nation's comprehensive flood risk[9] through the development and implementation of floodplain management standards. A longer-term objective of the NFIP is to reduce federal expenditure on disaster assistance after floods.

As a public insurance program, the NFIP is designed differently from private-sector companies. As currently authorized, the NFIP also encompasses social goals to provide flood insurance in flood-prone areas to property owners who otherwise would not be able to obtain it, and to reduce government's cost after floods.[10] The NFIP also engages in many "non-insurance" activities in the public interest: it disseminates flood risk information through flood maps, requires communities to adopt land use and building code standards in order to participate in the program, potentially reduces the need for other post-flood disaster aid, contributes to community resilience by providing a mechanism to fund rebuilding after a flood, and may protect lending institutions against mortgage defaults due to uninsured losses. The benefits of such tasks are not directly measured in the NFIP's financial results from selling flood insurance.[11]

From the inception of the NFIP, the program has been expected to achieve multiple objectives, some of which may conflict with one another:

- To ensure reasonable insurance premiums for all;

[6] Statistics on the National Flood Insurance Program (NFIP) policy and claims are available from the Federal Emergency Management Agency (FEMA) website at https://www.fema.gov/policy-claim-statistics-flood-insurance.

[7] Detailed information about which communities participate and where is available from the Community Status Book, found on FEMA's website at https://www.fema.gov/national-flood-insurance-program-community-status-book.

[8] Premium amounts used are net premiums written and asset amounts are admitted assets from A.M. Best, *Statistical Study: U.S. Property/Casualty - 2017 Financial Results*, March 26, 2018.

[9] In the context of this report, *comprehensive* flood risk means that the risk includes both financial risk (i.e., physical damage to property), and also the risk to human life.

[10] See 82 Stat. 573 for text in original statute (Section 1302(c) of P.L. 90-448). This language remains in statute (see 42 U.S.C. §4001(c)).

[11] American Academy of Actuaries Flood Insurance Work Group, *The National Flood Insurance Program: Challenges and Solutions*, April 2017, p. 79, http://www.actuary.org/files/publications/FloodMonograph.04192017.pdf.

- To have risk-based premiums that would make people aware of and bear the cost of their floodplain location choices;
- To secure widespread community participation in the NFIP and substantial numbers of insurance policy purchases by property owners; and
- To earn premium and fee income that, over time, covers claims paid and program expenses.[12]

Primary Flood Insurance Through the NFIP

The NFIP offers flood insurance to anyone in a community which chooses to participate in the program. Flood insurance purchase generally is voluntary, except for property owners who are in a Special Flood Hazard Area (SFHA)[13] and whose mortgage is backed by the federal government.[14] Flood insurance policies through the NFIP are sold only in participating communities and are offered to both property owners and renters and to residential and non-residential properties. NFIP policies have relatively low coverage limits, particularly for non-residential properties or properties in high-cost areas. The maximum coverage for single-family dwellings (which also includes single-family residential units within a 2-4 family building) is $100,000 for contents and up to $250,000 for building coverage. The maximum available coverage limit for other residential buildings is $500,000 for building coverage and $100,000 for contents coverage, and the maximum coverage limit for non-residential business buildings is $500,000 for building coverage and $500,000 for contents coverage.

The Mandatory Purchase Requirement

By law and regulation, federal agencies, federally regulated lending institutions, and government-sponsored enterprises (GSE)[15] must require the property owners in an SFHA to purchase flood insurance as a condition of any mortgage that these entities make, guarantee, or purchase.[16] In addition to this legal mandatory purchase requirement, lenders may also require borrowers outside of an SFHA to maintain flood insurance as a means of financially securing the property.

In order to comply with this mandate, property owners may purchase flood insurance through the NFIP, or through a private company, so long as the private flood insurance "provides flood insurance coverage which is at least as broad as the coverage" of the NFIP, among other conditions.[17] The mandatory purchase requirement is enforced by the lender, rather than FEMA,

[12] National Research Council of the National Academies, *Affordability of National Flood Insurance Program Premiums: Report 1*, 2015, p. 3, at http://www.nap.edu/catalog/21709/affordability-of-national-flood-insurance-program-premiums-report-1.

[13] A Special Flood Hazard Area (SFHA) is defined by FEMA as an area with a 1% or greater risk of flooding every year.

[14] This includes mortgages from banks insured by the Federal Deposit Insurance Corporation and mortgages backed by Fannie Mae or Freddie Mac, as well as federal entities such as the Federal Housing Administration and the Department of Veterans Affairs.

[15] Government-Sponsored Enterprises (GSEs) are private companies with congressional charters. Examples of GSEs providing mortgages which would be affected by the mandatory purchase requirement include the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae).

[16] 42 U.S.C. §4012a.

[17] 42 U.S.C §4012a(b). For additional information on private flood insurance, see CRS Insight IN10450, *Private Flood Insurance and the National Flood Insurance Program (NFIP)*, by (name redacted) and (name redacted). The "at least as broad as" requirement is discussed in more detail in the section titled "Flood Insurance Coverage "at Least as Broad as" the NFIP" in this report.

and lenders can be fined up to $2,000 by banking regulators for each failure to require flood insurance or provide notice.[18] Property owners who do not obtain flood insurance when required may find that they are not eligible for certain types of disaster assistance after a flood.[19]

Premium Subsidies and Cross-Subsidies

Flood insurance rates in the NFIP generally are directed by statute to be "based on consideration of the risk involved and accepted actuarial principles,"[20] meaning that the rate is reflective of the true flood risk to the property. However, Congress has directed FEMA *not* to charge actuarial rates for certain categories of properties and to offer discounts to other classes of properties.[21] FEMA is not, however, provided funds to offset these subsidies and discounts,[22] which has contributed to FEMA's need to borrow from the U.S. Treasury to pay NFIP claims.

There are three main categories of properties which pay less than full risk-based rates:

- *Pre-FIRM*: properties which were built or substantially improved before December 31, 1974, or before FEMA published the first Flood Insurance Rate Map (FIRM) for their community, whichever was later;[23]
- *Newly mapped*: properties that are newly mapped into a SFHA on or after April 1, 2015, if the applicant obtains coverage that is effective within 12 months of the map revision date;[24] and
- *Grandfathered*: properties which were built in compliance with the FIRM in effect at the time of construction and are allowed to maintain their old flood insurance rate class if their property is remapped into a new flood rate class.[25]

NFIP Reauthorization and Legislation in the 115th Congress

The NFIP is currently authorized until July 31, 2018.[26] Since the end of FY2017, six short-term NFIP reauthorizations have been enacted. A number of bills have been introduced to provide a

[18] 42 U.S.C §4012a(f).

[19] For additional information, see CRS Report R44808, *Federal Disaster Assistance: The National Flood Insurance Program and Other Federal Disaster Assistance Programs Available to Individuals and Households After a Flood*, by (name redacted)

[20] 42 U.S.C. §4014(a)(1).

[21] For a full discussion of NFIP subsidies and cross-subsidies, see the section on Pricing and Premium Rate Structure in CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by (name redacted) and (name red acted) , and the section on Premiums Subsidies and Cross-Subsidies in CRS Report R45099, *National Flood Insurance Program: Selected Issues and Legislation in the 115th Congress*, by (name redacted)

[22] Government Accountability Office (GAO), *Flood Insurance: Comprehensive Reform Could Improve Solvency and Enhance Resilience*, GAO-17-425, April 2017, p. 17, https://www.gao.gov/products/GAO-17-425.

[23] 42 U.S.C. §4015(c).

[24] §6 of P.L. 113-89, 128 Stat.1028, as codified at 42 U.S.C. §4015(i).

[25] For a full description, see FEMA, *NFIP Grandfathering Rules for Agents*, March 2015, at http://www.fema.gov/media-library-data/1428677451158-82ba453a84ad628c406d69957b3d8622/Grandfathering_for_Agents_03_2015.pdf.

[26] The statute for the NFIP does not contain a comprehensive expiration, termination, or sunset provision for the whole of the program. Rather, the NFIP has multiple different legal provisions that generally tie to the expiration of key components of the program. Unless reauthorized or amended by Congress, the following will occur on July 31, 2018: (1) The authority to provide new flood insurance contracts will expire. Flood insurance contracts entered into before the expiration would continue until the end of their policy term of one year. (2) The authority for NFIP to borrow funds from the Treasury will be reduced from $30.425 billion to $1 billion (42 U.S.C. §4016(a)).

longer-term reauthorization of the NFIP as well as numerous other changes to the program. The House of Representatives passed H.R. 2874 (The 21st Century Flood Reform Act) by a vote of 237-189 on November 14, 2017. Among its numerous provisions, H.R. 2874 would authorize the NFIP until September 30, 2022.

Three bills have been introduced in the Senate that would reauthorize the expiring provisions of the NFIP:

- S. 1313 (Flood Insurance Affordability and Sustainability Act of 2017);
- S. 1368 (Sustainable, Affordable, Fair, and Efficient [SAFE] National Flood Insurance Program Reauthorization Act of 2017);[27] and
- S. 1571 (National Flood Insurance Program Reauthorization Act of 2017).

None of these bills have yet been considered by the Senate Committee on Banking, Housing and Urban Affairs. Among their other provisions, S. 1313 would authorize the NFIP until September 30, 2027; S. 1368 would authorize the NFIP until September 30, 2023; and S. 1571 would authorize the NFIP until September 30, 2023.

The Senate version of the Farm Bill,[28] which passed by a vote of 86-11 on June 28, 2019, contains a provision to extend the NFIP for six months. The House version of H.R. 2 does not contain a similar provision and it is unclear how the two will be reconciled. A stand-alone bill to reauthorize the NFIP for six months, S. 3128, was also introduced on June 25, 2018.

The four reauthorization bills differ significantly in the degree to which they encourage private participation in flood insurance, particularly flood insurance sold by private companies in competition with the NFIP. In general, legislation passed by the House has been more encouraging of private flood insurance than Senate legislation. The House passed standalone legislation to encourage private insurance in the 114th Congress (H.R. 2901), but the Senate did not take up H.R. 2901 in the 114th Congress. In the 115th Congress, the House included the same provisions in H.R. 2874 and in an unrelated bill to reauthorize the Federal Aviation Administration (H.R. 3823). The Senate stripped the flood insurance language from H.R. 3823 before passing it, with the provisions relating to private flood insurance reportedly a particular issue of concern.[29] S. 1313 includes some similar provisions to H.R. 2874, but S. 1368 and S. 1571 do not.

Details of the provisions relating to private insurance in the House and Senate bills are described in the Appendix, and **Table A-1** relates the provisions in the bills to the issues discussed in this report.

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[27] A similar bill was introduced in the House, H.R. 3285.

[28] Section 12609 of SA 3224, the Senate amendment in the nature of a substitute to H.R. 2 , the Agriculture Improvement Act of 2018.

[29] See, for example, Shaun Courtney, "'Hard to Envision' Senate Democrats Blocking FAA Extension, Thune Says," *Bloomberg BNA*, September 27, 2017, Daily Report for Executives, https://www.bna.com/hard-envision-senate-n73014470158/,

> Thune wants to see the Senate pass the House bill under unanimous consent, but committee ranking member Bill Nelson (D-Fla.) made that sound unlikely. "That will not get passed here," Nelson said Sept. 26 in response to Bloomberg BNA's inquiry about the House's flood insurance provision.… Senator Sherrod Brown (D-Ohio), ranking member on the Banking, Housing, and Urban Affairs Committee, which has jurisdiction over flood insurance proposals, said the House provision was unacceptable. "We're not going to do it," Brown said. "This would undermine all of our flood insurance efforts. It will cause all kinds of cherry-picking by private insurance."

The Current Role of Private Insurers in the NFIP

Private insurers can be involved in the flood insurance market in a number of ways: (1) by helping to administer the NFIP; (2) by sharing risk with the NFIP; (3) by taking on risk themselves as a primary insurer, where the insurer contracts directly with a consumer; or (4) by taking on risk as a reinsurer, where the insurer shares risk from another insurer. Since 1983, private insurers have played a major role in administering the NFIP, including selling and servicing policies and adjusting claims, but they largely have not been underwriting flood risk themselves.[30] Instead, the NFIP retains the direct financial risk of paying claims for these policies. Since 2016, however, the NFIP has purchased a limited amount of reinsurance, thus transferring some of the flood risk to the private sector.

Servicing of Policies and Claims Management

While FEMA provides the overarching management and oversight of the NFIP, the majority of the day-to-day operation of the NFIP is handled by private companies. This includes marketing, selling and writing policies, and all aspects of claims management.[31] FEMA has established two different arrangements with private industry. The first is the Direct Servicing Agent, or DSA, which operates as a private contractor, selling NFIP policies on behalf of FEMA for individuals seeking to purchase flood insurance policies directly from the NFIP.[32] The DSA also handles the policies of severe repetitive loss properties. The second arrangement is the Write-Your-Own program, where private insurance companies are paid to issue and service NFIP policies. With either the DSA or WYO program, the NFIP retains the actual financial risk of paying claims for the policy, and the policy terms and premiums are the same. Approximately 12% of the total NFIP policy portfolio is managed through the DSA and 88% of NFIP policies are sold by the 67 companies participating in the WYO program.[33]

Companies participating in the WYO program are compensated through a variety of methods, but this compensation is not directly based on the costs incurred by the WYOs. In the Biggert-Waters Flood Insurance Reform Act of 2012 (Title II of P.L. 112-141, hereinafter BW-12), Congress required FEMA to develop and issue a rulemaking on a "methodology for determining the appropriate amounts that property and casualty insurance companies participating in the WYO program should be reimbursed for selling, writing, and servicing flood insurance policies and adjusting flood insurance claims on behalf of the National Flood Insurance Program."[34] This rulemaking was required within a year of enactment of BW-12. As of June 2018, FEMA has yet to publish a rulemaking to revise the compensation structure of the WYO companies. Without this analysis, it is difficult to ascertain how much it actually costs WYO companies to administer

[30] Underwriting risk refers to the potential loss to an insurer or reinsurer. An insurer takes on this risk in return for a premium, and promises to pay an agreed amount in the event of a loss. See NAIC, *Glossary of Insurance Terms*, http://www.naic.org/consumer_glossary.htm#U.

[31] See primarily 42 U.S.C. §4081 and §4018, and 44 C.F.R. Part 62.

[32] The current Direct Servicing Agent is a company called Torrent Technologies, Inc., who was awarded the contract in September 2016. See https://www.fbo.gov/index?s=opportunity&mode=form&id=58bec8ac15f6944abe778f4ae49a0841&tab=core&_cview=1. The website for Torrent Technologies, Inc. is at http://torrentcorp.com/.

[33] Email correspondence from FEMA Congressional Affairs staff, February 3, 2017. A list of companies participating in the WYO program is available at https://www.fema.gov/wyo_company.

[34] §100224 of P.L. 112-141, 126 Stat. 936.

the NFIP policies, or the WYO's profit margins (if any). H.R. 2874 would cap the allowance paid to the WYOs at 27.9% of premiums, while S. 1368 would cap the allowance at 22.46%.

Reinsurance

In the Homeowner Flood Insurance Affordability Act of 2014 (P.L. 113-89, HFIAA), Congress revised the authority of FEMA to secure reinsurance for the NFIP from the private reinsurance and capital markets.[35] The purchase of private market reinsurance reduces the likelihood of FEMA needing to borrow from the Treasury to pay claims. In addition, as the U.S. Government Accountability Office (GAO) noted, reinsurance could be beneficial because it allows FEMA to price some of its flood risk up front through the premiums it pays to the reinsurers rather than borrowing from Treasury after a flood.[36] From a risk management perspective, using reinsurance to cover losses in only the more extreme years could help the government to manage and reduce the volatility of its losses over time. However, because reinsurers understandably charge FEMA premiums to compensate for the risk they assume, the primary benefit of reinsurance is to transfer and manage risk rather than to reduce the NFIP's long-term fiscal exposure.[37] For example, a reinsurance scenario which would provide the NFIP with $16.8 billion coverage (sufficient for Katrina-level losses) could cost an estimated $2.2 billion per year.[38] Such a reinsurance premium, however, would be a large portion of the total premiums paid into the NFIP, possibly leaving insufficient funds for paying claims outside of large disasters,[39] or for covering the other purposes for NFIP funds, such as flood mitigation, mapping, and improving NFIP rating structures.

In January 2017, FEMA purchased $1.042 billion of reinsurance to cover the period from January 1, 2017, to January 1, 2018, for a premium of $150 million. Under this agreement, the reinsurance covered 26% of losses between $4 billion and $8 billion arising from a single flooding event.[40] FEMA has so far paid over $8.6 billion in claims for Hurricane Harvey, triggering a full claim on the 2017 reinsurance.[41] In January 2018, FEMA purchased $1.46 billion of reinsurance to cover the period from January 1, 2018, to January 1, 2019, for a premium of $235 million. The agreement is structured to cover losses above $4 billion for a single flooding event, covering 18.6% of losses between $4 billion and $6 billion, and 54.3% of losses between $6 billion and $8 billion. In April 2018, FEMA announced that it would seek to transfer additional NFIP risk to private markets through a reinsurance procurement in which the reinsurer acts as a transformer to transfer NFIP-insured flood risk through the issuance of a catastrophe bond, to be effective for a term of "likely" three years.[42]

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[35] See §10 of P.L. 113-89, 128 Stat. 1025, as codified at 42 U.S.C. §4081(e).

[36] GAO, *Flood Insurance: Comprehensive Reform Could Improve Solvency and Enhance Resilience*, GAO-17-425, April 2017, p. 19, https://www.gao.gov/products/GAO-17-425.

[37] Ibid.

[38] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 171, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[39] The NFIP reinsurance purchases are designed to cover claims for only one large flood, and smaller flood claims will continue to be paid from NFIP premiums.

[40] See FEMA, *National Flood Insurance Program's Reinsurance Program for 2017*, at https://www.fema.gov/nfip-reinsurance-program.

[41] Email correspondence from FEMA Congressional Affairs staff, May 14, 2018.

[42] FEMA, *National Flood Insurance Program (NFIP) Reinsurance Program*, at https://www.fema.gov/nfip-reinsurance-program. For additional information on this, see CRS Insight IN10887, *The National Flood Insurance Program (NFIP), Reinsurance, and Catastrophe Bonds*, by (name redacted) and (name redacted)

H.R. 2874, S. 1313, and S. 1571 all contain provisions requiring or encouraging the NFIP to transfer a portion of its risk to the private reinsurance market.

Private Flood Insurance Outside the NFIP: Issues and Barriers

One of the reasons that Congress created the NFIP in 1968 was the general unavailability of flood insurance from private insurers. Private flood insurance was offered between 1895 and 1927, but losses incurred from the 1927 Mississippi River floods and additional flood losses in 1928 led most insurers to stop offering flood policies.[43] Private flood insurance companies largely concluded that flood peril was uninsurable because of the catastrophic nature of flooding, the difficulty of determining accurate rates, the risk of adverse selection,[44] and the concern that they could not profitably provide risk-based flood coverage at a price that consumers felt they could afford.[45]

Currently, the private flood insurance market most commonly provides commercial coverage, secondary coverage above the NFIP maximums, or coverage in the lender-placed market.[46] The 2017 premiums for private flood insurance as reported to the National Association of Insurance Commissioners (NAIC) [47] totaled $589 million, up from $376 million in 2016,[48] compared to the $3.5 billion total amount of NFIP premiums. In general, the private flood market tends to focus on high-value properties, which command higher premiums and therefore the extra expense of flood underwriting can be more readily justified.[49]

Currently very few private insurers compete with the NFIP in the primary residential flood insurance market. One illustration of this is that the NAIC only began systematically collecting separate data on private flood insurance in 2016.[50]

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[43] National Research Council of the National Academies, *Affordability of National Flood Insurance Program Premiums: Report 1*, 2015, p. 23, http://www.nap.edu/catalog/21709/affordability-of-national-flood-insurance-program-premiums-report-1.

[44] Adverse selection is the phenomenon whereby persons with a higher than average probability of loss seek greater insurance coverage than those with less risk. See National Association of Insurance Commissioners (NAIC), *Glossary of Insurance Terms*, http://www.naic.org/consumer_glossary.htm.

[45] See GAO, *Flood Insurance: Strategies for Increasing Private Sector Involvement*, GAO-47-127, January 2014, p. 6, https://www.gao.gov/products/GAO-14-127, and Caroline Kousky and Howard Kunreuther, *The National Flood Insurance Program: Yesterday, Today and Tomorrow*, NAIC, Center for Insurance Policy and Research Study Series 2017-1: Flood Risk and Insurance, Kansas City, MO, April 2017, pp. 23-45, http://www.naic.org/documents/cipr_study_1704_flood_risk.pdf.

[46] The lender-placed or forced-place market is where lenders can force-place flood insurance on properties that are out of compliance with the mandatory purchase requirement.

[47] The NAIC is an organization of the state regulators of insurance and, among other things, collects the data that the regulators require to be reported by insurance companies.

[48] Statistics provided by the National Association of Insurance Commissioners to CRS. They do not include coverage written in the surplus lines marketplace by non-U.S. insurers.

[49] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 32, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[50] Reinsurance is defined as a transaction between a primary insurer and another licensed (re)insurer where the reinsurer agrees to cover all or part of the losses and/or loss adjustment expenses of the primary insurer. See NAIC, *Glossary of Insurance Terms*, http://www.naic.org/consumer_glossary.htm#R.

A number of issues have been identified by private insurers as potential barriers to more widespread private sector involvement. Moreover, increasing private insurance may present a number of issues for the NFIP and for consumers.

Flood Insurance Coverage "at Least as Broad as" the NFIP

In BW-12, Congress explicitly allowed federal agencies to accept private flood insurance to fulfill the mandatory purchase mortgage requirement as long as the private flood insurance "provides flood insurance coverage which is at least as broad as the coverage" of the NFIP, among other conditions.[51] Implementation of this requirement has proved challenging. The crux of the implementation issue is in answering the question of who would evaluate whether specific policies met the "at least as broad as" standard and what criteria would be used in making this evaluation. Some lending institutions feel that they lack the necessary technical expertise to evaluate whether a flood insurance policy meets the definition of private flood insurance set forth in BW-12.[52]

The responsible federal agencies[53] issued two separate Notices of Proposed Rulemaking (NPRM), the first in October 2013,[54] and the second in November 2016.[55] In response to comments received on the first NPRM, the second NPRM proposed a rule which would require regulated lending institutions to accept policies that meet the statutory definition of private insurance in BW-12 and permit regulated lending institutions to accept flood insurance provided by private insurers that does not meet the statutory definition on a discretionary basis, subject to certain restrictions. It also included a compliance aid provision that a private flood insurance policy is deemed to meet the BW-12 definition of "private flood insurance" if the following three criteria are met: (1) the policy includes, or is accompanied by, a written summary that demonstrates how the policy meets the definition of "private flood insurance" by identifying the provisions of the policy that meet each criterion in the definition, and confirms that the insurer is regulated in accordance with that definition; (2) the regulated lending institution verifies in writing that the policy includes the provisions identified by the insurer in its summary and that these provisions satisfy the criteria included in the definition; and (3) the policy includes the following provision within the policy or as an endorsement to the policy: ''This policy meets the definition of private flood insurance contained in 42 U.S.C. §4012a(b)(7) and the corresponding regulation'' (assurance clause). However, no final rule has been promulgated, and the uncertainty about whether or not private policies would meet this standard has been viewed as a barrier to private sector participation in the flood insurance market.[56]

[51] 42 U.S.C §4012a(b).

[52] Department of the Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, National Credit Union Administration, "Loans in Areas Having Special Flood Hazards, Proposed Rule," vol. 78, no. 201 *Federal Register* 65113, October 30, 2013.

[53] Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, and National Credit Union Administration.

[54] Department of the Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, National Credit Union Administration, "Loans in Areas Having Special Flood Hazards, Proposed Rule," vol. 78, no. 201 *Federal Register* 65108-65144, October 30, 2013.

[55] Department of the Treasury, Federal Reserve System, Federal Deposit Insurance Corporation, Farm Credit Administration, National Credit Union Administration, "Loans in Areas Having Special Flood Hazards—Private Flood Insurance," vol. 81, no. 215 *Federal Register* 78063-78080, November 7, 2016.

[56] GAO, *Flood Insurance: Potential Barriers Cited to Increased Use of Private Insurance*, GAO-16-611, July 14, 2016, pp. 26-29, https://www.gao.gov/assets/680/678414.pdf.

H.R. 2874 and S. 1313 include provisions to revise the definition of private flood insurance to strike existing statutory language requiring private flood insurance to provide coverage "as broad as the coverage" provided by the NFIP in order to meet the mandatory purchase requirements. Instead, the definition would rely on whether the insurance policy and insurance company were in compliance with the individual state's laws and regulations. S. 1368 and S. 1571 have no similar provisions.

Continuous Coverage

An associated issue is that of continuous coverage, which is required for property owners to retain any subsidies or cross-subsidies in their NFIP premium rates. Under existing law, if an NFIP policyholder allows their policy to lapse, any subsidy that they currently receive would be eliminated immediately.[57] Unless legislation specifically allows private flood insurance to count for continuous coverage, a borrower may be reluctant to purchase private insurance if doing so means they would lose their subsidy should they later decide to return to NFIP coverage. H.R. 2874 includes a provision to specify that if a property owner purchases private flood insurance and decides then to return to the NFIP, they would be considered to have maintained continuous coverage. S. 1313 includes a provision to allow private flood insurance to count as continuous coverage. S. 1368 and S. 1571 have no similar provisions.

The "Non-Compete" Clause

Private insurers who sell and service NFIP policies, known as Write Your Own (WYO) carriers, have been restricted in their ability to sell flood insurance policies on their own behalf while also participating as a WYO, due to the "non-compete" clause contained in the standard contracts in place with the NFIP. [58] These contracts governing the WYO companies' participation in the NFIP restrict the WYO carriers from selling their own standalone private flood products that compete with the NFIP policies, curtailing the potential involvement of the WYO companies in the flood insurance marketplace.[59] The non-compete clause requires WYO companies to decide whether to offer private flood insurance policies in their own right or to act as WYO carriers; however, they cannot do both, potentially limiting the size of the private flood market. H.R. 2874 would eliminate the non-compete clause, while S. 1313 would give temporary authorization for WYOs to sell private flood insurance for certain types of properties,[60] with a follow-up study by FEMA to determine if the authorization should be made permanent.

FEMA announced proposed changes for FY2019 in which they would remove restrictions on WYO companies choosing to offer private flood insurance, while maintaining requirements that such private insurance lines remain entirely separate from a WYO company's NFIP insurance business.[61] If implemented, this may remove the non-compete clause without need for legislation.

[57] As required by Section 100205(a)(1)(B) of BW-12 (P.L. 112-141, 126 Stat. 917), only for NFIP policies that lapsed in coverage as a result of the deliberate choice of the policyholder.

[58] Details of the WYO company arrangements are available at https://www.fema.gov/media-library-data/1504278934379-6bdf86cd243d53170e7ff8a2afc6770d/FY2018_Financial_Assistance_Subsidy_Arrangement_Oct_2017.pdf.

[59] GAO, *Flood Insurance: Potential Barriers Cited to Increased Use of Private Insurance*, GAO-16-611, July 14, 2016, p. 31, https://www.gao.gov/assets/680/678414.pdf.

[60] Non-residential properties, severe repetitive loss properties, business properties, or any property that has incurred flood-related damage in which the cumulative amount of payments equaled or exceeded the fair market value of the property.

[61] FEMA, "National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Notice of FY (continued...)

Possible implications if the non-compete clause were to be removed and WYO companies are allowed to sell flood insurance policies in competition with the NFIP are discussed later in this report in the section on "Adverse Selection."

NFIP Subsidized Rates

FEMA's subsidized rates are often seen as one of the primary barriers to private sector involvement in flood insurance.[62] However, even without the subsidies mandated by law, the NFIP's definition of full-risk rates differs from that of private insurers. Whereas the NFIP's full-risk rates must incorporate expected losses and operating costs, a private insurer's full-risk rates must also incorporate a profitable return on capital. As a result, even those NFIP policies which are considered to be actuarially sound from the perspective of the NFIP may still be underpriced from the perspective of private insurers.[63] In order to make the flood insurance market attractive, private insurers would want to be able to charge premium rates that reflect the full estimated risk of potential flood losses while still allowing the companies to make a profit. A reformed NFIP rate structure could have the effect of encouraging more private insurers to enter the primary flood market because NFIP full-risk based rates would be closer to the rates that private insurers would likely charge; however, this could lead to higher rates for households.

H.R. 2874 would phase out the pre-FIRM subsidy for primary residences at a rate of 6.5%-15% (compared to the current rate of 5%-18%), in a staged manner. In the first year after enactment, the minimum rate increase would be 5%; in the second year after enactment, the minimum rate increase would be 5.5%; and in the third year of enactment, the minimum rate increase would be 6%. The phaseout of the pre-FIRM subsidy for other categories of properties[64] would remain at 25%. The Senate bills do not contain any provisions related to premium rate subsidies.

Regulatory Uncertainty

As addressed above, the rules on the acceptance of private insurance for the mandatory purchase requirement, and whether or not private flood insurance would count for continuous coverage, have had a significant impact on the market potential for private insurers.[65] Another driver of private sector concern is regulatory uncertainty at the state level. The role of state regulators would increase in a flood insurance market with increased private sector involvement, which could increase the burden of oversight. The involvement of 56 state and territorial insurance regulators is likely to add complexity and additional costs for insurers, lenders, or property

(...continued)

2019 Arrangement," 83(52) *Federal Register* 11772-11778, March 16, 2018.

[62] GAO, *Flood Insurance: Comprehensive Reform Could Improve Solvency and Enhance Resilience*, GAO-17-425, April 2017, p. 34, https://www.gao.gov/products/GAO-17-425.

[63] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 58, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[64] Non-primary residences, non-residential properties, severe repetitive loss properties, properties with substantial cumulative damage, and properties with substantial damage or improvement after July 6, 2012.

[65] See FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 62, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf; and GAO, *Flood Insurance: Potential Barriers Cited to Increased Use of Private Insurance*, GAO-16-611, July 14, 2016, pp. 26-29, https://www.gao.gov/assets/680/678414.pdf.

owners.[66] For example, some private insurers cited the intervention of state regulators in controlling rates for wind insurance in Florida as a reason for withdrawing from that market.[67] However, this could also lead to the development of state-specific insurance solutions, which might better suit local social and economic conditions.[68] H.R. 2874 and S. 1313 reference state laws and regulations in their definition of private flood insurance that could meet the mandatory purchase requirements.

Ability to Assess Flood Risk Accurately

Many insurers view the lack of access to NFIP data on flood losses and claims as a barrier to more private companies offering flood insurance. It is argued that increasing access to past NFIP claims data would allow private insurance companies to better estimate future losses and price flood insurance premiums, and ultimately to determine which properties they might be willing to insure.[69] However, FEMA's view is that the agency would need to address privacy concerns in order to provide property level information to insurers, because the Privacy Act of 1974[70] prohibits FEMA from releasing policy and claims data which contain personally identifiable information. Private insurers have also suggested that better flood risk assessment tools such as improved flood maps and inland and storm surge models are needed in order to price risks at the individual and portfolio level.[71] H.R. 2874 would require FEMA to make all NFIP claims data publicly available in a form that does not reveal personally identifiable information, while S. 1313 would authorize FEMA to sell or license individual claims data while requiring FEMA to make aggregate claims data available.

Adequate Consumer Participation

Insurers need sufficient consumer participation to manage and diversify their risk exposure. Many private insurers have expressed the view that broader participation in the flood insurance market would be necessary to address adverse selection and maintain a sufficiently large risk pool.[72] A long-standing objective of the NFIP has been to increase purchases of flood insurance policies, and this objective was the motivation for introducing the mandatory purchase requirement.

Despite the mandatory purchase requirement, not all covered mortgages carry the insurance as dictated, and no up-to-date data on national compliance rates with the mandatory purchase requirement are available. A 2006 study commissioned by FEMA found that compliance with this mandatory purchase requirement may be as low as 43% in some areas of the country (the

[66] Ibid., p. 63.

[67] Ibid., p. 105.

[68] Ibid., p. 41.

[69] American Academy of Actuaries Flood Insurance Work Group, *The National Flood Insurance Program: Challenges and Solutions*, April 2017, p. 60, http://www.actuary.org/files/publications/FloodMonograph.04192017.pdf.

[70] P.L. 93-579, 5 U.S.C. §552a, as amended.

[71] See, for example, GAO, *Flood Insurance: Strategies for Increasing Private Sector Involvement*, 14-127, January 2, 2014, pp. 10-11, https://www.gao.gov/products/GAO-14-127; FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 61, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf; and Albert Kuller and Eleanor Gibson, *After the Storms: Harvey, Irma and Maria: Lessons Learned*, Lloyds, Market Insight Report 2018, May 24, 2018, pp. 1-30, https://www.lloyds.com/news-and-risk-insight/risk-reports/library/natural-environment/afterthestorms.

[72] GAO, *Flood Insurance: Strategies for Increasing Private Sector Involvement*, 14-127, January 2, 2014, p. 14, https://www.gao.gov/products/GAO-14-127.

Midwest), and as high as 88% in others (the West).[73] A more recent study of flood insurance in New York City found that compliance with the mandatory purchase requirement by properties in the SFHA with mortgages increased from 61% in 2012 to 73% in 2016.[74] The escrowing of insurance premiums, which began in January 2016, may increase compliance with the mandatory purchase requirement more widely, but no data are yet available.

The mandatory purchase requirement could potentially be expanded to more (or all) mortgage loans made by federally regulated lending institutions for properties in communities participating in the NFIP.[75] Another possible option would be to require all properties within the SFHA to have flood insurance, not just those with federally backed mortgages.[76] Consumer participation could also be increased if the federal government were to mandate that homeowners' insurance policies include flood coverage or require all homeowners to purchase flood insurance.[77] All four bills contain provisions for some form of study to assess the compliance with the mandatory purchase requirement. H.R. 2874 would also increase civil penalties on lenders for failing to enforce the mandatory purchase requirement.

Potential Effects of Increased Private Sector Involvement in the Flood Market

Increased Consumer Choice

Current NFIP policies offer a relatively limited array of coverages, particularly compared to what is available in private markets for similar insurance against perils other than floods. Private insurance companies could potentially compete with the NFIP by offering coverage not available under the NFIP, such as business interruption insurance, living expenses while a property is being repaired, basement coverage, coverage of other structures on a property, and/or by offering policies with coverage limits higher than the NFIP. The NFIP currently also has a 30-day waiting period in almost all cases before the insurance coverage goes into effect,[78] whereas private insurance companies may have a shorter waiting period. Private companies could also offer flood coverage as an add-on to a standard homeowners' policy, which could eliminate the current

[73] Lloyd Dixon, Noreen Clancy, and Seth A. Seabury, et al., *The National Flood Insurance Program's Market Penetration Rate: Estimates and Policy Implications*, RAND Corporation, prepared as part of the Evaluation of the National Flood Insurance Program, February 2006, p. 23, https://www.fema.gov/media-library-data/20130726-1602-20490-2804/nfip_eval_market_penetration_rate.pdf.

[74] Lloyd Dixon, Noreen Clancy, and Benjamin M. Miller, et al., *The Cost and Affordability of Flood Insurance in New York City: Economic Impacts of Rising Premiums and Policy Options for One- to Four- Family Homes*, Rand Corporation, RAND RR1776, Santa Monica, CA, April 2017, pp. 15-18, https://www.rand.org/pubs/research_reports/RR1776.html.

[75] NFIP, *Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, Appendix C: Flood Insurance Risk Study: Options for Privatizing the NFIP, August 13, 2015, p. 86, https://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[76] Association of State Floodplain Managers, Inc., *Rethinking the NFIP*, ASFPM Comments on NFIP Reform, January 11, 2011, p. 5, http://www.floods.org/ace-files/documentlibrary/National_Policy/Rethinking_the_NFIP_Comments_from_ASFPM_1-11-11.pdf.

[77] GAO, *Flood Insurance: Strategies for Increasing Private Sector Involvement*, 14-127, January 2, 2014, p. 22, https://www.gao.gov/products/GAO-14-127.

[78] See FEMA, *Flood Insurance Manual, General Rules Section*, Revised April 2018, p. GR 9, https://www.fema.gov/media-library-data/1523307258594-4cf9726b2eb04c3471a3e9d37a58fa6a/03_general_rules_508_apr2018.pdf.

problem of distinguishing between flood damage (which is covered by the NFIP) and wind damage (which is often covered by standard homeowners' insurance). Unlike the NFIP, private flood insurance companies may also issue a policy without necessarily requiring elevation certificates, perhaps by using new technology to measure the elevation of individual structures.

Cheaper Flood Insurance

Since some properties receive lower NFIP rates due to cross subsidies from other NFIP policyholders, it seems likely that some of the non-subsidized NFIP policyholders would be able to obtain less expensive flood insurance from private insurers. Private insurers may also be able to offer premiums more closely tied to individual risks than the NFIP currently does, which would provide lower premiums for some policyholders. Quantifying the potential savings for some policyholders from private insurance is, however, difficult. The amount and extent of cross-subsidization within the NFIP is not currently known, as the NFIP has not historically tracked the number of grandfathered properties.[79] One example of an attempt to provide estimates of NFIP versus private insurance is a modeling exercise carried out by two private companies, Milliman and KatRisk, which looked at premiums for single-family homes in Louisiana, Florida, and Texas. Their modeling suggested that 77% of single-family homes in Florida, 69% in Louisiana, and 92% in Texas would pay less with a private policy than with the NFIP; however, 14% in Florida, 21% in Louisiana, and 5% in Texas would pay over twice as much.[80] Milliman did not provide any details of the coverage offered by these private policies, nor the basis on which their figures were estimated.

Variable Consumer Protections

The consumer protections associated with private policies are likely to be enforced at a state level and will therefore be variable; some states may offer a higher level of protection than others. Because private insurers are free to accept or reject potential policyholders as necessary in order to manage their risk portfolio, private insurers may not necessarily renew a policy. A private flood insurance policy might be less expensive than an NFIP policy, but it might also offer less extensive coverage, which a policyholder may not realize until they make a claim following a flood. Unlike the NFIP, the language in private flood insurance policies is not standardized and has not yet been tested in court in the same way as, for example, homeowners' insurance. Thus there may be greater variability in claims outcomes for consumers in the early years of private flood insurance penetration.

[79] FEMA does not have a definitive estimate on the number of properties that have a grandfathered rate in the NFIP, though data are being collected to fulfill a separate mandate of HFIAA. Section 28 of HFIAA (P.L. 113-89, 128 Stat. 1033) requires that the Administrator "clearly communicate full flood risk determinations to individual property owners regardless of whether their premium rates are full actuarial rates." To fulfill this mandate, FEMA must identify all properties that are grandfathered or pre-FIRM and notify those policyholders what their property's true flood risk is versus the risk they are currently paying for with a subsidy/cross-subsidy. See FEMA, *Clear Communication Letters*, https://www.fema.gov/media-library/collections/553.

[80] Nancy P. Watkins, *Could Private Flood Insurance Be Cheaper Than the NFIP?* Milliman, Milliman Briefing Paper, San Francisco, CA, July 10, 2017, pp. 1-2, http://www.milliman.com/insight/2017/Could-private-flood-insurance-be-cheaper-than-the-NFIP/.

Adverse Selection

Private sector competition might increase the financial exposure and volatility of the NFIP, as private markets will likely seek out policies that offer the greatest likelihood of profit. In the most extreme case, the private market may "cherry-pick" (i.e., adversely select against the NFIP) the profitable, lower-risk NFIP policies that are "overpriced" either due to cross-subsidization or imprecise flood insurance rate structures, particularly when there is pricing inefficiency in favor of the customer.[81] This could leave the NFIP with a higher density of actuarially unsound policies that are being directly subsidized or benefiting from cross-subsidization. Because the NFIP cannot refuse to write a policy, those properties that are considered "undesirable" by private insurers are likely to remain in the NFIP portfolio—private insurers will not compete against the NFIP for policies that are inadequately priced from their perspective.[82] Private insurers, as profit-seeking entities, are unlikely independently to price flood insurance policies in a way that ensures affordable premiums as a purposeful goal, although some private policies could be less expensive than NFIP policies. It is likely that the NFIP would be left with a higher proportion of subsidized policies, which may become less viable in a competitive market.[83]

The extent of such "cherry picking" is uncertain with some arguing that it would have little effect.[84] However, evidence from the UK flood insurance market suggests that even in an entirely private market "cherry picking" can be difficult to avoid. Interviews of private insurers indicate that one of the key drivers for the introduction of Flood Re, the new UK private flood insurance scheme, was the emergence of new entrants in the flood insurance market after 2000. These new entrants had little or no existing high-flood-risk business and no commitment to continue to insure this business under the terms of the informal agreement with the government. This gave them a competitive advantage, as they could choose to select the more profitable lower-risk business. One driver for change therefore was that Flood Re would include these new entrants and force them to contribute by charging their clients for the cross-subsidy for Flood Re, leveling the playing field between the private insurers.[85]

A significant increase in private flood insurance policies that "depopulates" the NFIP may also undermine the NFIP's ability to generate revenue, reducing the amount of past borrowing that can be repaid or extending the time required to repay the debt. If the number of NFIP policies decreases, it would likely become increasingly difficult for the remaining NFIP policyholders to subsidize policies, raising prices for the non-subsidized policyholders and thus accelerating the move to private insurance. In the long term the program could be left as a "residual market" for subsidized or high-risk properties. Residual market mechanisms are used in areas such as auto insurance, where consumers may be required to purchase insurance, but higher risk individuals

[81] David Altmaier, Andy Case, and Mike Chaney, et al., *Flood Risk and Insurance*, NAIC Center for Insurance Policy and Research, CIPR Study Series 2017-1, April 2017, p. 47, http://www.naic.org/documents/cipr_study_1704_flood_risk.pdf.

[82] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 85, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[83] American Academy of Actuaries Flood Insurance Work Group, *The National Flood Insurance Program: Challenges and Solutions*, April 2017, p. 66, http://www.actuary.org/files/publications/FloodMonograph.04192017.pdf.

[84] See, for example, R.J. Lehman, "Private Flood Insurance Market Is Getting Bigger, More Competitive, Less Profitable," *Insurance Journal*, March 18, 2018, at https://www.insurancejournal.com/blogs/right-street/2018/03/18/483689.htm.

[85] Edmund C. Penning-Rowsell, Sally Priest, and Clare Johnson, "The Evolution of UK Flood Insurance: Incremental Change Over Six Decades," *International Journal of Water Resources Development*, vol. 30, no. 4 (2014), pp. 694-713.

may be unable to purchase it from regular insurers. The exact form of residual market mechanisms vary in different states and for different types of insurance, but they typically require some form of outside support either from the government or from insurers themselves.

In its cost estimate of H.R. 2874,[86] CBO considered the impact of eliminating the WYO companies' non-compete agreement and estimated that holders of about 690,000 properties that would have been purchased under the NFIP under current law over the 2017-2027 period would instead choose to buy private flood insurance. In CBO's view, no property owners who are subsidized by the NFIP would be expected to be among those leaving the program.[87] CBO estimated that eliminating the non-compete clause and making NFIP data publically available would lead to an increase in spending of $39 million for the 2018-2022 period and $393 million for the 2018-2017 period.[88]

S. 1313 would require FEMA, within two years of enactment, to report on the extent to which the properties for which private flood insurance is purchased tend to be at a lower risk than properties for which NFIP policies are purchased (i.e., the extent of adverse selection), by detailing the risk classifications of the private flood insurance policies. S. 1313 would also give the FEMA Administrator the power to limit the participation of WYO companies in the broader flood insurance marketplace if the Administrator determines that private insurance adversely impacts the NFIP.

Issues for NFIP Flood Mapping and Floodplain Management

If the number of NFIP policyholders were to decrease significantly, it might also be difficult to support the NFIP's functions of reducing flood risk through flood mapping and floodplain management.[89] NFIP flood mapping is currently funded in two ways, through (1) annual discretionary appropriations; and (2) discretionary spending authority from offsetting money collected from the Federal Policy Fee (FPF).[90] The FPF is paid to FEMA and deposited in the National Flood Insurance Fund (NFIF). The income from the FPF is designated to pay for floodplain mapping activities, floodplain management programs, and certain administrative expenses.[91] About 66% of the resources from the FPF are allocated to flood mapping, with floodplain management receiving about 19% of the overall income from the FPF.[92] To the extent that the private flood insurance market grows and policies move from the NFIP to private insurers, FEMA will no longer collect the FPF on those policies and less revenue will be available for floodplain mapping and management. Concerns have been raised about maintaining the activities funded by the FPF, with some stakeholders arguing that a form of FPF equivalency, or some form of user fee, should be applied to private flood insurance.[93] Both S. 1313 and S. 1368

[86] Congressional Budget Office, *Cost Estimate. H.R. 2874, 21st Century Flood Reform Act.*, Washington, DC, September 8, 2017, pp. 1-13, https://www.cbo.gov/publication/53088.

[87] Ibid., p. 9.

[88] Ibid., p. 5.

[89] For a further discussion of the NFIP's floodplain management and mapping functions, see CRS Report R45099, *National Flood Insurance Program: Selected Issues and Legislation in the 115th Congress*, by (name redacted)

[90] For an additional explanation of NFIP funding, including the funding for mapping, see CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by (name redacted) and (name redacted)

[91] 42 U.S.C. §4014(a)(1)(B)(iii).

[92] Email correspondence from FEMA Congressional Affairs staff, December 6, 2016.

[93] Association of State Floodplain Managers, *ASFPM Detailed Priorities for NFIP Reauthorization and Reform*, June 17, 2016, p. 1, http://www.floods.org/ace-images/Priorities.pdf.

contain mechanisms by which private insurance companies could contribute to the costs of floodplain mapping in lieu of paying the FPF.

Enforcement of floodplain management standards could be more challenging within a private flood insurance system, as the current system makes the availability of NFIP insurance in a community contingent on the implementation of floodplain management standards. For example, the Association of State Floodplain Managers (ASFPM) has expressed concerns that the widespread availability of private flood insurance could lead some communities to drop out of the NFIP and rescind some of the floodplain management standards and codes they had adopted, leading to more at-risk development in flood hazard areas.[94] ASFPM suggested that this issue could be addressed by allowing private policies to meet the mandatory purchase requirement only if they were sold in participating NFIP communities.[95] FEMA suggested that access to federal disaster assistance could be made partially contingent on the adoption of appropriate mitigation policies, but noted that this approach could be politically challenging.[96] However, a positive consequence is that government investment in mitigation could increase private market participation by reducing the flood exposure of high-risk properties and thereby increasing the number of properties that private insurers would be willing to cover.[97]

Concluding Comments

The policy debate surrounding NFIP and private insurance has evolved over the last few years. The discussion in 2012 was framed in the context of privatization of the NFIP and actions that might be taken to create conditions for private sector involvement. One of the primary interests of Congress at the time was to reduce the federal government's role in flood insurance by transferring its exposure to the private sector,[98] with an expectation that a realignment of roles would allow the federal government to focus on flood risk mitigation while private markets focused on providing flood insurance.[99] One argument for increasing private sector participation in the U.S. flood market was that competition should lead to innovation in flood risk analytics and modeling and produce new flood insurance products that would better meet customer needs and lead to greater levels of insurance market penetration.[100] In fact, private sector flood risk analytics and modeling have improved significantly before any sizable entry of private insurers into the market. Another argument was that, in contrast to the NFIP, which cannot diversify its portfolio of flood risk by insuring unrelated risks, the insurance industry can diversify catastrophic risks with

[94] Association of State Floodplain Managers, *ASFPM's Comments on Loans in Areas Having Special Flood Hazards - Private Flood Insurance Joint Notice of Proposed Rulemaking*, January 6, 2017, pp. 1-4, http://www.floods.org/ace-images/PrivateFloodIns_OCC_Jan2017.pdf.

[95] Ibid.

[96] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 92, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[97] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 108, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[98] Ibid., p. 2.

[99] Ibid., p. 52.

[100] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 50, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

uncorrelated or less correlated risks from other perils, other geographic regions, non-catastrophic risks, or risks from unrelated lines of business.[101]

FEMA considered a range of concrete steps by which the barriers to private sector involvement could be addressed.[102] One of these has been introduced: the purchase of reinsurance. Two others are in progress: the reduction of premium subsidies for some properties[103] and reporting to make premium subsidies and cross-subsidies more transparent.[104] Although BW-12 directed FEMA to make a recommendation about the best manner in which to accomplish the privatization of the NFIP, FEMA presented the report without a recommendation, arguing that any privatization strategy is complex and involves significant policy decisions that would require input from a variety of stakeholders. They concluded that there is no single, clear solution; it is heavily politicized; and harsh criticism of any change is inevitable.[105]

Currently the discussion is more focused on sharing risk, with the recognition that neither the NFIP nor the private sector is likely to be able to write all of the policies needed to cover all of the flood risk in the United States. FEMA has identified the need to increase flood insurance coverage across the nation as a major priority for NFIP reauthorization, and this also forms a key element of their 2018-2022 strategic plan.[106] FEMA has developed a "moonshot" with the goal of doubling flood insurance coverage by 2023 through the increased sale of both NFIP and private policies.

The 2017 hurricane season highlighted the flood insurance gap in the United States, where many people that are exposed to flood risk are not covered by flood insurance. For example, in Texas and Florida, less than a third of the flooded residential structures in SFHAs were insured, and no more than 10%-12% of flooded residential structures outside the SFHA were insured.[107] Recent floods have also demonstrated that insured flood victims generally receive significantly more from NFIP flood insurance than from FEMA Individual Assistance (IA). For example, in the 2015 South Carolina floods, the average NFIP claim was $34,936, while the average IA payment was about $3,199. In the 2016 Louisiana floods, the average NFIP claim was $90,725, while the average IA payment was about $9,349. For Hurricane Harvey, the average NFIP claim was $112,964, while the average IA payment in Texas was about $4,331. For Hurricane Irma, the average NFIP claim was $45,421, while the average IA payment in Florida was about $1,302.[108]

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[101] Ibid., p. 51.

[102] Ibid., pp. 82-84.

[103] For a discussion of the reduction of NFIP subsidies and cross-subsidies, see the section on Pricing and Premium Rate Structure in CRS Report R44593, *Introduction to the National Flood Insurance Program (NFIP)*, by (name red acted) and (name redacted) and the section on Premiums Subsidies and Cross-Subsidies in CRS Report R45099, *National Flood Insurance Program: Selected Issues and Legislation in the 115th Congress*, by (name redacted)

[104] The requirement in section 28 of HFIAA (P.L. 113-89, 128 Stat. 1033) that the Administrator "clearly communicate full flood risk determinations to individual property owners regardless of whether their premium rates are full actuarial rates."

[105] FEMA, *National Flood Insurance Program Report to Congress on Reinsuring NFIP Insurance Risk and Options for Privatizing the NFIP*, August 13, 2015, p. 84, http://www.floods.org/ace-files/documentlibrary/2012_NFIP_Reform/Reinsuring_NFIP_Insurance_Risk_and_Options_for_Privatizing_the_NFIP_Report.pdf.

[106] FEMA, *2018-2022 Strategic Plan*, https://www.fema.gov/media-library/assets/documents/160940.

[107] CRS analysis of data provided by FEMA Congressional Affairs staff, November 6, 2017. For additional information on NFIP penetration rates in recent floods, see CRS Insight IN10890, *Closing the Flood Insurance Gap*, by (name red acted)

[108] CRS analysis of data from FEMA on average NFIP payments at https://www.fema.gov/significant-flood-events. Data on IA payments for 2015 South Carolina floods at https://www.fema.gov/disaster/4241. Data for IA payments for 2016 Louisiana floods at https://www.fema.gov/disaster/4277. Data for IA payments for Hurricane Harvey in Texas at (continued...)

FEMA's view is that both the NFIP and an expanded private market will be needed to increase flood insurance coverage for the nation and reduce uninsured flood losses.[109] However,the private market is unlikely to expand significantly without congressional action. The concerns of private companies related to the mandatory purchase requirement and continuous coverage and the concerns of some Members of Congress about adverse selection are among the most pressing issues likely to be addressed in any upcoming NFIP reauthorization.

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https://www.fema.gov/disaster/4332. Data for IA payments for Hurricane Irma in Florida at https://www.fema.gov/disaster/4337.

[109] Roy Wright, *Keynote Remarks to National Flood Conference*, May 1, 2017, https://www.fema.gov/media-library-data/1493727672905-9f2950b534607c3f9ef3e771d28a81e2/PreparedRemarks_Wright_NationalFloodConference_May2017.pdf.

Appendix. Provisions Related to Private Flood Insurance in Legislation in the 115th Congress

The provisions in the House bill and the three Senate bills which relate to private flood insurance, and the issues raised as barriers to private sector involvement, are summarized below and compared side-by-side in **Table A-1**. All of the bills also include provisions related to administrative reforms of the NFIP, some of which may be relevant to private insurance companies, which are not described in this report.

H.R. 2874, 21St Century Flood Reform Act

- H.R. 2874, Section 102, would phase out the pre-FIRM subsidy for primary residences at a rate of 6.5%-15% (compared to the current rate of 5%-18%), except that in the first year after enactment, the minimum rate increase would be 5%; in the second year after enactment, the minimum rate increase would be 5.5%; and in the third year of enactment, the minimum rate increase would be 6%. The phaseout of the pre-FIRM subsidy for other categories of properties (non-primary residences, non-residential properties, severe repetitive loss properties, properties with substantial cumulative damage, and properties with substantial damage or improvement after July 6, 2012) would remain at 25%. This section would make it possible, but not certain, for FEMA to raise premiums more rapidly than under current legislation by increasing the minimum rate at which the pre-FIRM subsidy could be removed for primary residences.
- H.R. 2874, Section 201, would revise the definition of private flood insurance previously defined in BW-12. This section would strike existing statutory language describing how private flood insurance must provide coverage "as broad as the coverage" provided by the NFIP. Instead, the definition would rely on whether the insurance policy and insurance company were in compliance in the individual state (as defined to include certain territories and the District of Columbia). Further, "private flood insurance" would be specifically defined as including surplus lines insurance.[110] Though the majority of regulation of private flood insurance would then rest with individual states, federal regulators[111] would be required to develop and implement requirements relating to the financial strength of private insurance companies from which such entities and agencies will accept private insurance, provided that such requirements shall not affect or conflict with any state law, regulation, or procedure concerning the regulation of the business of insurance. The dollar amount of coverage would still have to meet federal statutory requirements and the GSEs may implement requirements relating to the financial strength of such companies offering flood insurance. This section would also specify that if a property owner purchases private flood insurance and decides then to return to the NFIP, they would be considered to

[110] Surplus lines (or non-admitted) insurance provide coverage for unusual risks typically unavailable in the traditional insurance marketplace. For a further discussion of surplus lines insurance, see the NAIC website at http://www.naic.org/cipr_topics/topic_surplus_lines.htm.

[111] Specifically "the Director of the Federal Housing Finance Agency, in consultation with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Secretary of Housing and Urban Development, the Government National Mortgage Association, and the Secretary of Agriculture."

have maintained continuous coverage. This section would allow private insurers to offer policies that provide coverage that might differ significantly from NFIP coverage, either by providing greater coverage or potentially providing reduced coverage that could leave policyholders exposed after a flood.

- H.R. 2874, Section 202, would apply the mandatory purchase requirement only to residential improved real estate, thereby eliminating the requirement for other types of properties (e.g., all commercial properties) to purchase flood insurance from January 1, 2019. This would likely affect the policy base of the NFIP by reducing the number of commercial properties covered.[112] However, it is uncertain how many would elect to forgo insurance coverage (public or private) entirely. To the extent that commercial properties no longer choose to carry insurance (or are allowed to drop insurance coverage by the conditions of their mortgages), there may be increased uninsured damages to these properties from floods.
- H.R. 2874, Section 203, would eliminate the non-compete requirement in the WYO arrangement with FEMA that currently restricts WYO companies from selling both NFIP and private flood insurance policies. This would allow the WYO companies to offer their own insurance policies while also receiving reimbursement for their participation in the WYO program to administer the NFIP policies. It is unknown what criteria WYO companies would use to establish their own policies, and how they would choose to offer those policies rather than NFIP policies to potential customers. This section has essentially been pre-empted by FEMA's proposed changes for FY2019 to remove the WYO non-compete clause.[113]
- H.R. 2874, Section 204, would require FEMA to make publicly available all data, models, assessments, analytical tools, and other information that is used to assess flood risk or identify and establish flood elevations and premiums. This section would also require FEMA to develop an open-source data system by which all information required to be made publicly available may be accessed by the public on an immediate basis by electronic means. Within 12 months after enactment, FEMA would be required to establish and maintain a publicly searchable database that provides information about each community participating in the NFIP. This section provides that personally identifiable information would not be made available; the information provided would be based on data that identifies properties at the zip code or census block level. Ultimately, this data could be used to better inform the participation of private insurers in offering private flood insurance, as well as informing future flood mitigation efforts. However, the availability of NFIP data could make it easier for private insurers to identify the NFIP policies that are "overpriced" due to explicit cross-subsidization or imprecise flood insurance rate structures, and adversely select these properties, while the government would likely retain those policies that benefit from those subsidies and imprecisions, potentially increasing the deficit of the NFIP.[114]

[112] As of March 2018, there were 262,283 non-residential policies out of a total of 5,025,389 NFIP policies, or 5.2%. See https://www.fema.gov/policies-force-occupancy-type.

[113] FEMA, "National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Notice of FY 2019 Arrangement," 83(52) *Federal Register* 11772-11778, March 16, 2018.

[114] American Academy of Actuaries Flood Insurance Work Group, *The National Flood Insurance Program:* (continued...)

- H.R. 2874, Section 506, would establish that the allowance paid to WYO companies would not be greater than 27.9% of the chargeable premium for such coverage. It would also require FEMA to reduce the cost of companies participating in the WYO program.
- H.R. 2874, Section 507, would increase the civil penalties from $2,000 to $5,000 on federally regulated lenders for failure to comply with enforcing the mandatory purchase requirement. In addition, the federal entities for lending regulations, in consultation with FEMA, would be required jointly to update and reissue the guidelines on compliance with mandatory purchase.
- H.R. 2874, Section 513, would require a report by GAO on the implementation and efficacy of the mandatory purchase requirement within 18 months of enactment.
- H.R. 2874, Section 511, would require annual transfer of a portion of the risk of the NFIP to the private reinsurance or capital markets to cover a FEMA-determined probable maximum loss target that is expected to occur in the fiscal year, no later than 18 months after enactment.

S. 1313, Flood Insurance Affordability and Sustainability Act of 2017

- S. 1313, Section 101, would require annual transfer of a portion of the risk of the NFIP to the private reinsurance or capital markets in an amount that is sufficient to maintain the ability of the program to pay claims, and limit the exposure of the NFIP to potential catastrophic losses from extreme events.
- S. 1313, Section 102, would require FEMA to conduct a study in coordination with the National Association of Insurance Commissioners to address how to increase participation in flood insurance coverage through programmatic and regulatory changes, and report to Congress no later than 18 months after enactment. This study would be required to include but not be limited to options to (1) expand coverage beyond the SFHA to areas of moderate flood risk; (2) automatically enroll customers in flood insurance while providing customers the opportunity to decline enrollment; and (3) create bundled flood insurance coverage that diversifies risk across multiple-peril insurance.
- S. 1313, Section 401, would allow any state-approved private insurance to satisfy the mandatory purchase requirement, and allow private flood insurance to count as continuous coverage. This section would also change the amount of insurance required[115] for both private flood insurance policies and NFIP policies in order to satisfy the mandatory purchase requirement. The required coverage would be the lesser of 80% of the purchase price of the property, the maximum NFIP coverage for that type of property, or the outstanding balance of the loan (for multiunit

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Challenges and Solutions, April 2017, p. 4, http://www.actuary.org/files/publications/FloodMonograph.04192017.pdf.

[115] 42 U.S.C. §4012a(a) requires that a building or mobile home must be 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 NFIP, whichever is less. This section also provides that the amount of flood insurance need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

structures only). This section would also require FEMA, within two years of enactment, to report on the extent to which the properties for which private flood insurance is purchased tend to be at a lower risk than properties for which NFIP policies are purchased (i.e., the extent of adverse selection), by detailing the risk classifications of the private flood insurance policies. This data, while identifying adverse selection based on risk profiles, might not identify if there has been adverse selection based on subsidization.

- S. 1313, Section 402, would give temporary authority for sale of private flood insurance by WYO companies for certain properties during the first two years after enactment (e.g., non-residential properties, severe repetitive loss properties, business properties, or any property that has incurred flood-related damage in which the cumulative amount of payments equaled or exceeded the fair market value of the property).[116] After two years and on completion of a study measuring the risk classification underwritten by participating WYO companies, if the FEMA Administrator determines that the provision of flood insurance to properties in addition to those categories above will not adversely impact the ability of the NFIP to maintain a diverse risk pool, the Administrator would be authorized to expand (or limit) the participation of WYO companies in the broader flood insurance marketplace.
- S. 1313, Section 403, would require FEMA to study the feasibility of selling or licensing the use of historical structure-specific NFIP claims data to non-governmental entities, while reasonably protecting policyholder privacy, and report within a year of enactment. This section would also authorize FEMA to sell or license claims data as the Administrator determines is appropriate and in the public interest, with the proceeds to be deposited in the National Flood Insurance Fund (NFIF).
- S. 1313, Section 404, would require an insurance company that issues a policy for private flood insurance to impose and collect an annual surcharge equivalent to the Federal Policy Fee (FPF),[117] which would be transferred to the FEMA Administrator and deposited in the NFIF.
- S. 1313, Section 602, would require FEMA, not later than one year from enactment, to create and maintain a publicly searchable database that includes the aggregate number of claims filed each month, by state; the aggregate number of claims paid in part or in full; and the aggregate number of claims denials appealed, denials upheld on appeal, and denials overturned on appeal; without making personally identifiable information available.

S. 1368, Sustainable, Affordable, Fair, and Efficient [SAFE] National Flood Insurance Program Reauthorization Act of 2017

- S. 1368, Section 302, would establish that the total amount of reimbursement paid to WYO companies would not be greater than 22.46% of the chargeable premium for such coverage.

[116] 42 U.S.C. §4014(a)(2)(A)-(D).

[117] The Federal Policy Fee (FPF) was authorized by Congress in 1990 and helps pay for the administrative expenses of the program, including floodplain mapping and some of the insurance operations. See 42 U.S.C. §4014(a)(1)(B)(iii).

- S. 1368, Section 303, would require FEMA to develop a fee schedule based on recovering the actual costs of providing Flood Insurance Rate Maps (FIRMs) and charge any private entity an appropriate fee for use of such maps. This requirement would provide a mechanism by which private insurance companies could contribute to the costs of floodplain mapping in lieu of paying the FPF.
- S. 1368, Section 304, would require FEMA, within 12 months of enactment, to develop a schedule to determine the actual costs of WYO companies, including claims adjusters and engineering companies, and reimburse the WYO companies only for the actual costs of the service or products.
- S. 1368, Section 410, would require FEMA to conduct a study and report to Congress within one year of enactment on the percentage of properties with federally backed mortgages located in SFHAs that satisfy the mandatory purchase requirement, and the percentage of properties with federally backed mortgages located in the 500-year floodplain that would satisfy the mandatory purchase requirement if the mandatory purchase requirement applied to such properties.

S. 1571, National Flood Insurance Program Reauthorization Act of 2017

- S. 1571, Section 302, would specify that FEMA may consider any form of risk transfer, including traditional reinsurance, catastrophe bonds, collateralized reinsurance, resilience bonds, and other insurance-linked securities.
- S. 1571, Section 303, would require the federal banking regulators to conduct an annual study regarding the rate at which persons who are subject to the mandatory purchase requirement are complying with that requirement. Section 303 would also require FEMA to conduct an annual study of participation rates and financial assistance to individuals who live in areas outside SFHAs.

Table A-1. Provisions Related to Private Flood Insurance in Legislation in the 115th Congress

Provision	H.R. 2874	S. 1313	S. 1368	S. 1571
Revised definition of private flood insurance	§201. Would define private flood insurance as any policy that complies with state laws and regulations.	§401. Would define private flood insurance as any policy that complies with state laws and regulations.	No comparable provisions	No comparable provisions
Mandatory purchase requirement	§202. Would allow any state-approved private insurance to satisfy mandatory purchase requirement and continuous coverage. Commercial properties would not require flood insurance after January 1, 2019.	§401. Would allow any state-approved private insurance to satisfy mandatory purchase requirement and continuous coverage.	No comparable provisions	No comparable provisions
Non-compete clause	§203. Would eliminate non-compete requirement for WYO companies.	§401. Would give temporary authority for sale of private flood insurance by WYO companies for certain types of properties.[a] After two years and on completion of study, if FEMA determines that provision of flood insurance in properties in additional categories would not adversely impact ability of the NFIP to maintain a diverse risk pool, FEMA could expand participation of WYO companies in flood market.	No comparable provisions	No comparable provisions
Risk transfer	§511. Would require annual transfer of a portion of NFIP risk to capital or reinsurance markets to cover a FEMA-determined probable maximum loss target that is expected to occur in the fiscal year.	§101. Would require annual transfer of a portion of NFIP risk to capital or reinsurance markets to cover an amount that is sufficient to maintain ability of NFIP to pay claims and limit exposure of NFIP to catastrophic losses from extreme events.	No comparable provisions	§302. Would specify that FEMA may consider any form of risk transfer, including traditional reinsurance, catastrophe bonds, collateralized reinsurance, resilience bonds, and other insurance-linked securities.

Provision	H.R. 2874	S. 1313	S. 1368	S. 1571
WYO allowance	§506. WYO allowance would not be greater than 27.9% of the chargeable premium.	No comparable provisions	§302. WYO allowance would not be greater than 22.46% of the chargeable premium.	No comparable provisions
WYO costs	No comparable provisions	No comparable provisions	§304. Would require FEMA to develop a schedule to determine actual costs of WYO companies, including claims adjusters and engineering companies, and reimburse WYO companies only for actual costs of services or products.	No comparable provisions
Changes to NFIP subsidized rates	§102. Would phase out the pre-FIRM subsidy for primary residences at a rate of 6.5%-15%. The phaseout of the pre-FIRM subsidy for other categories of properties[b] would remain at 25%.	No comparable provisions	No comparable provisions	No comparable provisions
NFIP claims data	§204. Would make all NFIP claims data, models, analytical tools, and other information publicly available. Would require FEMA to create and maintain a publically searchable database.	§403. Would require FEMA to study feasibility of selling or licensing use of claims data, and would authorize FEMA to sell or license claims data and deposit funds in NFIF. §602 would require FEMA to create and maintain a publically searchable database of aggregate claims data.	No comparable provisions	No comparable provisions

Provision	H.R. 2874	S. 1313	S. 1368	S. 1571
Increasing participation	§507. Would increase civil penalties from $2,000 to $5,000 on federally regulated lenders for failure to comply with enforcing mandatory purchase requirement. §102. Would require report by GAO on implementation and efficacy of mandatory purchase requirement.	§102. Would require FEMA to conduct study on how to increase participation in flood insurance coverage.	§410. Would require FEMA to conduct study on percentages of properties with federally backed mortgages in SFHAs that satisfy the mandatory purchase requirement, and percentages of properties with federally backed mortgages in 500-year floodplains that would satisfy the mandatory purchase requirement if applied to such properties.	§303. Would require federal banking regulators to conduct annual study on compliance with mandatory purchase requirement. Would also require FEMA to conduct annual study of participation rates and financial assistance to individuals who live in areas outside SFHAs.
Study of risk classification of private insurance policies	No comparable provisions	§401. Would require FEMA to report within two years on the extent to which the properties for which private flood insurance is purchased tend to be at a lower risk than properties for which NFIP flood insurance is purchased by detailing the risk classification of private insurance policies.	No comparable provisions	No comparable provisions
Funding for flood mapping	No comparable provisions	§404. Would require insurance company that issues policy for private flood insurance to impose and collect an annual surcharge equivalent to the Federal Policy Fee, which would be transferred to FEMA and deposited in the NFIF.	§303. Would require FEMA to develop a fee schedule based on recovering the actual costs of providing FIRMs and charge any private entity an appropriate fee for use of such maps.	No comparable provisions

Source: CRS analysis of legislation from http://www.congress.gov.

Notes: H.R. 2874 as passed by the House. S. 1313, S. 1368, and S. 1571 as introduced.

FEMA: Federal Emergency Management Agency; FIRM: Flood Insurance Rate Map; NFIF: National Flood Insurance Fund; NFIP: National Flood Insurance Program; SFHA: Special Flood Hazard Area; WYO: Write-Your-Own company.

a. Non-residential properties, severe repetitive loss properties, business properties, or any property that has incurred flood-related damage in which the cumulative amount of payments equaled or exceeded the fair market value of the property.

b. Non-primary residences, non-residential properties, severe repetitive loss properties, properties with substantial cumulative damage, and properties with substantial damage or improvement after July 6, 2012.

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