

PRIVATE FLOOD INSURANCE MARKET DEVELOPMENT
ACT OF 2017

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

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

R E P O R T

[To accompany H.R. 1422]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1422) to amend the Flood Disaster Protection Act of 1973 to require that certain buildings and personal property be covered by flood insurance, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Private Flood Insurance Market Development Act of 2017”.

SEC. 2. PRIVATE FLOOD INSURANCE.

(a) **MANDATORY PURCHASE REQUIREMENT.**—

(1) **AMOUNT AND TERM OF COVERAGE.**—Section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) is amended by striking “Sec. 102. (a)” and all that follows through the end of subsection (a) and inserting the following: “SEC. 102. (a) **AMOUNT AND TERM OF COVERAGE.**—After the expiration of sixty days following the date of the enactment of this Act, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Administrator as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance: *Provided*, That the amount of flood insurance (1) in the case of Federal flood insurance, is at least equal to the development or project cost of the building, mobile home, or personal property (less estimated land cost), the outstanding principal balance of the loan, or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less; or (2) in the case of private flood insurance, is at least equal to the

development or project cost of the building, mobile home, or personal property (less estimated land cost), the outstanding principal balance of the loan, or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less: *Provided further*, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.”.

(2) REQUIREMENT FOR MORTGAGE LOANS.—Subsection (b) of section 102 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)) is amended—

(A) by striking paragraph (7);

(B) by redesignating paragraph (6) as paragraph (7);

(C) by striking the subsection designation and all that follows through the end of paragraph (5) and inserting the following:

“(b) REQUIREMENT FOR MORTGAGE LOANS.—

“(1) REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance: *Provided*, That the amount of flood insurance (A) in the case of Federal flood insurance, is at least equal to the outstanding principal balance of the loan or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less; or (B) in the case of private flood insurance, is at least equal to the outstanding principal balance of the loan or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less.

“(2) FEDERAL AGENCY LENDERS AND MORTGAGE INSURANCE AND GUARANTEE AGENCIES.—

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

“(B) OTHER FEDERAL MORTGAGE ENTITIES.—

“(i) COVERAGE REQUIREMENTS.—Each covered Federal mortgage entity shall implement procedures reasonably designed to ensure that, for any loan that—

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

“(II) is made, insured, held, or guaranteed by such entity, or backs or on which is based any trust certificate or other security for which such entity guarantees the timely payment of principal and interest,

the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

“(ii) DEFINITION.—For purposes of this subparagraph, the term ‘covered Federal mortgage entity’ means—

“(I) the Secretary of Housing and Urban Development, with respect to mortgages insured under the National Housing Act;

“(II) the Secretary of Agriculture, with respect to loans made, insured, or guaranteed under title V of the Housing Act of 1949; and

“(III) the Government National Mortgage Association.

“(C) REQUIREMENT TO ACCEPT FLOOD INSURANCE.—Each Federal agency lender and each covered Federal mortgage entity shall accept flood insurance as satisfaction of the flood insurance coverage requirement under subparagraph (A) or (B), respectively, if the flood insurance coverage meets the requirements for coverage under such subparagraph and the requirements relating to financial strength issued pursuant to paragraph (4).

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

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

“(B) purchased or guaranteed by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall accept flood insurance as satisfaction of the flood insurance coverage requirement under paragraph (1) if the flood insurance coverage provided meets the requirements for coverage under that paragraph and the requirements relating to financial strength issued pursuant to paragraph (4).

“(4) REQUIREMENTS REGARDING FINANCIAL STRENGTH.—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 shall develop and implement requirements relating to the financial strength of private insurance companies from which such entities and agencies will accept private flood 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.

“(5) APPLICABILITY.—

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

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

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

“(6) RULE OF CONSTRUCTION.—Except as otherwise specified, any reference to flood insurance in this section shall be considered to include Federal flood insurance and private flood insurance. Nothing in this subsection shall be construed to supersede or limit the authority of a Federal entity for lending regulation, the Federal Housing Finance Agency, a Federal agency lender, a covered Federal mortgage entity (as such term is defined in paragraph (2)(B)(ii)), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to establish requirements relating to the financial strength of private insurance companies from which the entity or agency will accept private flood 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.”; and

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

“(8) DEFINITIONS.—In this section:

“(A) FLOOD INSURANCE.—The term ‘flood insurance’ means—

“(i) Federal flood insurance; and

“(ii) private flood insurance.

“(B) FEDERAL FLOOD INSURANCE.—The term ‘Federal flood insurance’ means an insurance policy made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

“(C) PRIVATE FLOOD INSURANCE.—The term ‘private flood insurance’ means an insurance policy that—

“(i) is issued by an insurance company that is—

“(I) licensed, admitted, or otherwise approved to engage in the business of insurance in the State in which the insured building is located, by the insurance regulator of that State; or

“(II) eligible as a nonadmitted insurer to provide insurance in the home State of the insured, in accordance with sections 521 through 527 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8201 through 8206);

“(ii) is issued by an insurance company that is not otherwise disapproved as a surplus lines insurer by the insurance regulator of the State in which the property to be insured is located; and

“(iii) provides flood insurance coverage that complies with the laws and regulations of that State.

“(D) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.”

(b) EFFECT OF PRIVATE FLOOD INSURANCE COVERAGE ON CONTINUOUS COVERAGE REQUIREMENTS.—Section 1308 of the National Flood Insurance Act of 1968 (42 U.S.C. 4015) is amended by adding at the end the following:

“(n) EFFECT OF PRIVATE FLOOD INSURANCE COVERAGE ON CONTINUOUS COVERAGE REQUIREMENTS.—For purposes of applying any statutory, regulatory, or administrative continuous coverage requirement, including under section 1307(g)(1), the Administrator shall consider any period during which a property was continuously covered by private flood insurance (as defined in section 102(b)(8) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)(8))) to be a period of continuous coverage.”

PURPOSE AND SUMMARY

Introduced by Representatives Dennis Ross and Kathy Castor on March 8, 2017, H.R. 1422, the “Flood Insurance Market Parity and Modernization Act”, amends the Flood Disaster Protection Act of 1973 to clarify that flood insurance offered by a private carrier outside of the National Flood Insurance Program (NFIP) can satisfy the Act’s mandatory purchase requirement. H.R. 1422 defines acceptable private flood insurance as a policy providing flood insurance coverage that is issued by an insurance company that is licensed, admitted, or otherwise approved to engage in the business of insurance in the state or jurisdiction in which the insured property is located. Under H.R. 1422, an acceptable private flood insurance policy may also be issued by an insurance company that is eligible as a non-admitted insurer to provide insurance in the state or jurisdiction where the property to be insured is located.

BACKGROUND AND NEED FOR LEGISLATION

Floods are among the most frequently occurring and costly natural disasters. Most declarations of federal disasters by the Federal Emergency Management Agency (FEMA) are related to flooding. Yet despite the frequency and severity of losses that result from flooding, the private insurance market generally did not provide insurance for flooding; when it did, insurance for flood-related damage can be expensive because the properties most at-risk tend to be highly concentrated geographically and the potential risk of economic losses is extremely high.

To supplement the availability of flood insurance in the private market, Congress, in 1968, created the National Flood Insurance

Program (NFIP), which is administered by FEMA and provides flood insurance to approximately 5.1 million policyholders across the country. In exchange for premiums paid by policyholders, NFIP makes federally backed flood insurance available to homeowners and other property owners (for example, businesses, churches, and farmers) in these communities.

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

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

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

As of June 5, 2017, the NFIP has an outstanding debt of \$24.6 billion borrowed from taxpayers, with roughly \$1.1 billion available cash-on-hand and \$5.825 billion remaining of its total temporary \$30.425 billion Treasury borrowing authority. The NFIP's debt results primarily from its borrowing to pay claims relating to the Gulf Coast hurricanes in 2005 and Superstorm Sandy in October 2012. This borrowing stems from a structural imbalance in how the NFIP measures and prices for risk, resulting in only 46 percent of premium dollars collected in 2016 being available for the payments of claims. With such a low portion of premiums available to pay claims, the pressure on the NFIP to borrow from taxpayers increases. The NFIP's structural budget crisis has required periodic legislation to increase its borrowing authority, the most recent example of which occurred in January 2013 when Congress increased the NFIP's borrowing authority by \$9.7 billion—from \$20.725 billion to its current \$30.425 billion level.

In 1973, Congress passed the Flood Disaster Protection Act, under which federally regulated or insured lenders must require the purchase of flood insurance on properties in high-risk flooding areas if the U.S. government backs the mortgage thereon. While this Act does not require that coverage be provided under the NFIP, its effect, over time, has been to discourage private sector participation in the flood insurance market and funnel virtually all flood risk through the NFIP.

H.R. 1422 would encourage the development of a robust private market by allowing insurers to work directly with their state commissioners to write policies that work for their customers' pricing and coverage needs. Choice and competition will lead to better products, pricing, and innovation and would give consumers another place to turn besides the Federal government for this important safeguard.

HEARINGS

The Committee on Financial Services' Subcommittee on Housing and Insurance held two hearings examining matters relating to H.R. 1422 on March 9, 2017 and March 16, 2017. The Committee on Financial Services held a hearing examining matters relating to H.R. 1422 on June 7, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 21, 2017 to consider H.R. 1422. The Committee ordered H.R. 1422 to be reported favorably to the House, as amended, by a recorded vote of 58 ayes to 0 nays (Recorded vote no. FC-65), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. An amendment in the nature of a substitute offered by Mr. Ross was agreed to by voice vote. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House, as amended. The motion was agreed to by a recorded vote of 58 ayes to 0 nays (Recorded vote no. FC-65), a quorum being present.

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

Committee on Financial Services

115th Congress

DATE: 6/21/17

Measure HR 1422

Amendment No. MTA

Offered by: _____

Agreed To	Yes	No	Wdrn
	✓		

Voice Vote	Yeas	Nays	Prsnt
	58	0	

Record vote no.	FC-65
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As Amended

COMMITTEE OVERSIGHT FINDINGS

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

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 1422 will reduce federal regulatory barriers for private insurance carriers to enter the flood insurance market.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

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

COMMITTEE COST ESTIMATE

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

CONGRESSIONAL BUDGET OFFICE ESTIMATES

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

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

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1422, the Private Flood Insurance Market Development Act of 2017.

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

Sincerely,

MARK P. HADLEY
(For Keith Hall).

Enclosure.

H.R. 1422—Private Flood Insurance Market Development Act of 2017

Under current law homeowners with mortgages held by federally regulated financial institutions or that are guaranteed by the federal government must maintain a flood insurance policy if the home is located in a flood zone. H.R. 1422 would clarify that flood insurance provided by private firms satisfies that requirement. Today, private flood insurance options are not widely available but some insurance companies are developing analytical tools to underwrite flood insurance policies. Additionally, regulatory agencies are developing rules to clarify that private flood coverage meets the requirement for homeowners to maintain flood insurance. The private market for flood insurance is likely to continue to evolve and some homeowners may obtain private flood coverage.

About 80 percent of the National Flood Insurance Program (NFIP) policies have premiums that equal the expected cost of flood insurance, known as actuarial premiums; such policyholders also pay fees and surcharges to the NFIP that help cover the cost of the program. To the extent that NFIP policyholders that pay actuarial premiums leave the program and obtain private coverage under the bill, there would be a loss of budgetary receipts to the program. CBO cannot determine whether enacting H.R. 1422 would lead to the development of a robust private insurance market that would not otherwise occur, but as the private market for flood insurance policies continues to evolve, the NFIP will probably realize reduced receipts as some policyholders leave the program.

The bill also would direct the Federal Emergency Management Agency to consider policyholders who drop an NFIP policy and then later return to the NFIP as having continuous coverage if they can demonstrate that a flood insurance policy from a private firm was maintained throughout the interim period. That provision would permit policyholders paying a subsidized rate for an NFIP policy—about 20 percent of existing policyholders—to be eligible for subsidized rates if they return to NFIP and have maintained continuous coverage. Because such policyholders are not eligible for subsidized rates if they do not maintain continuous NFIP coverage, enacting that provision would increase direct spending by effectively reducing premiums for those policyholders.

Pay-as-you-go procedures apply because enacting the bill could affect direct spending. However, CBO estimates those effects would not be significant. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 1422 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1422 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Aurora Swanson. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

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

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

EARMARK IDENTIFICATION

H.R. 1422 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(c)(5) of rule XIII, the Committee states that no provision of H.R. 1422 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee states that H.R. 1422 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1 Short title

This Act may be cited as the “Flood Insurance Market Parity and Modernization Act”.

Sec. 2 Private flood insurance

Updates current law to reinforce and strengthen requirements that flood insurance provided by private sector insurance carriers shall be accepted and considered similar to those policies offered by the National Flood Insurance Program (NFIP), provided certain conditions are met. Strikes and restates, in part, the current statute with updated language to reflect the recognition of flood policies offered by the NFIP and the private flood insurance market. Identical to current law, restates the mandatory insurance requirement that any building, mobile home or personal property that would be financed by a federally-backed mortgage must have flood insurance if the property is located in an area designated as a special flood hazard.

Clarifies that the coverage amount of flood insurance provided under either a Federal or private policy must be at least equal to the lesser of: the development or project cost of the building, mobile home, or personal property (less estimated land cost); the outstanding principal balance of the federally insured loan secured by the property; or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property. If the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of required flood insurance need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

Consistent with current law, Federal banking regulators are required to instruct, by regulation, that regulated institutions not make loans secured by real property located in flood zones unless the property is covered by "flood insurance" (Federal or private). This section clarifies that each Federal banking regulator must require regulated financial institutions to accept Federal (National Flood Insurance Program) and private flood insurance as satisfaction of the flood insurance coverage requirement.

Updates current law to require the Government Sponsored Enterprises (GSEs), known as the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, to require flood insurance for any real estate or mobile home located in a special flood hazard area and purchased or guaranteed by such entity. This section would also add a new requirement that GSEs accept Federal (National Flood Insurance Program) and private flood insurance as satisfaction of the mandatory flood insurance coverage requirement, provided that the flood insurance coverage meets the requirements under this bill and any requirements established by the Federal Housing Finance Agency, in consultation with the Federal National Mortgage Association, the Federal Home Loan Corporation, the Secretary of Housing and Urban Development, the Government National Mortgage Association and the Secretary of Agriculture relating to the financial strength of such private insurance companies. Such requirements developed by the GSEs shall not affect or conflict with any state law, regulation, or procedure concerning the regulation of the business of insurance.

This section also clarifies that mortgages offered, insured, or guaranteed by the Department of Housing and Urban Development, or under Title V of the Housing Act of 1949 related to Rural Housing Service programs, or the Government National Mortgage Association would be required to accept private flood insurance policies.

Defines flood insurance as either "Federal flood insurance" or "private flood insurance." "Federal flood insurance" is defined as a policy available through the NFIP. "Private flood insurance" is defined as a flood insurance policy that is issued by a state-licensed insurer, or a non-admitted insurer that is not disapproved by the state as a surplus lines insurer, and that complies with the laws and regulations of the state in which the insured property is located. The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

Clarifies that the Administrator of the Federal Emergency Management Agency shall consider any period during which a property was continuously covered by private flood insurance to be a period of continuous coverage.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

FLOOD DISASTER PROTECTION ACT OF 1973

* * * * *

TITLE I—EXPANSION OF NATIONAL FLOOD INSURANCE PROGRAM

* * * * *

FLOOD INSURANCE PURCHASE AND COMPLIANCE REQUIREMENTS AND ESCROW ACCOUNTS

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

*(a) AMOUNT AND TERM OF COVERAGE.—After the expiration of sixty days following the date of the enactment of this Act, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Administrator as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance: *Provided*, That the amount of flood insurance (1) in the case of Federal flood insurance, is at least equal to the development or project cost of the building, mobile home, or personal property (less estimated land cost), the outstanding principal balance of the loan, or the maximum limit of*

Federal flood insurance coverage made available with respect to the particular type of property, whichever is less; or (2) in the case of private flood insurance, is at least equal to the development or project cost of the building, mobile home, or personal property (less estimated land cost), the outstanding principal balance of the loan, or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less: Provided further, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

[(b) REQUIREMENT FOR MORTGAGE LOANS.—

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

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

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

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

and substantially identical to the regulations issued under paragraph (1)(A).

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

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

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

【(4) APPLICABILITY.—

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

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

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

【(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to supersede or limit the authority of a Federal entity for lending regulation, the Federal Housing Finance Agency, a Federal agency lender, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Cor-

poration to establish requirements relating to the financial solvency, strength, or claims-paying ability of private insurance companies from which the entity or agency will accept private flood insurance.】

(b) *REQUIREMENT FOR MORTGAGE LOANS.—*

(1) *REGULATED LENDING INSTITUTIONS.—Each Federal entity for lending regulation (after consultation and coordination with the Financial Institutions Examination Council established under the Federal Financial Institutions Examination Council Act of 1974) shall by regulation direct regulated lending institutions not to make, increase, extend, or renew any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Administrator as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property securing such loan is covered for the term of the loan by flood insurance: Provided, That the amount of flood insurance (A) in the case of Federal flood insurance, is at least equal to the outstanding principal balance of the loan or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less; or (B) in the case of private flood insurance, is at least equal to the outstanding principal balance of the loan or the maximum limit of Federal flood insurance coverage made available with respect to the particular type of property, whichever is less.*

(2) *FEDERAL AGENCY LENDERS AND MORTGAGE INSURANCE AND GUARANTEE AGENCIES.—*

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

(B) *OTHER FEDERAL MORTGAGE ENTITIES.—*

(i) *COVERAGE REQUIREMENTS.—Each covered Federal mortgage entity shall implement procedures reasonably designed to ensure that, for any loan that—*

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

(II) is made, insured, held, or guaranteed by such entity, or backs or on which is based any trust certificate or other security for which such entity guarantees the timely payment of principal and interest,

the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1).

(ii) DEFINITION.—For purposes of this subparagraph, the term “covered Federal mortgage entity” means—

(I) the Secretary of Housing and Urban Development, with respect to mortgages insured under the National Housing Act;

(II) the Secretary of Agriculture, with respect to loans made, insured, or guaranteed under title V of the Housing Act of 1949; and

(III) the Government National Mortgage Association.

(C) REQUIREMENT TO ACCEPT FLOOD INSURANCE.—Each Federal agency lender and each covered Federal mortgage entity shall accept flood insurance as satisfaction of the flood insurance coverage requirement under subparagraph (A) or (B), respectively, if the flood insurance coverage meets the requirements for coverage under such subparagraph and the requirements relating to financial strength issued pursuant to paragraph (4).

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

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

(B) purchased or guaranteed by such entity, the building or mobile home and any personal property securing the loan is covered for the term of the loan by flood insurance in the amount provided in paragraph (1). The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall accept flood insurance as satisfaction of the flood insurance coverage requirement under paragraph (1) if the flood insurance coverage provided meets the requirements for coverage under that paragraph and the requirements relating to financial strength issued pursuant to paragraph (4).

(4) REQUIREMENTS REGARDING FINANCIAL STRENGTH.—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 shall develop and implement requirements relating to the financial strength of private insurance companies from which such entities and

agencies will accept private flood 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.

(5) APPLICABILITY.—

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

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

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

(6) RULE OF CONSTRUCTION.—Except as otherwise specified, any reference to flood insurance in this section shall be considered to include Federal flood insurance and private flood insurance. Nothing in this subsection shall be construed to supersede or limit the authority of a Federal entity for lending regulation, the Federal Housing Finance Agency, a Federal agency lender, a covered Federal mortgage entity (as such term is defined in paragraph (2)(B)(ii)), the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to establish requirements relating to the financial strength of private insurance companies from which the entity or agency will accept private flood 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.

[(6)] (7) NOTICE.—

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

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

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

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

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

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

[(A) is issued by an insurance company that is—

[(i) licensed, admitted, or otherwise approved to engage in the business of insurance in the State or jurisdiction in which the insured building is located, by the insurance regulator of that State or jurisdiction; or

[(ii) in the case of a policy of difference in conditions, multiple peril, all risk, or other blanket coverage insuring nonresidential commercial property, is recognized, or not disapproved, as a surplus lines insurer by the insurance regulator of the State or jurisdiction where the property to be insured is located;

[(B) provides flood insurance coverage which is at least as broad as the coverage provided under a standard flood insurance policy under the national flood insurance program, including when considering deductibles, exclusions, and conditions offered by the insurer;

[(C) includes—

[(i) a requirement for the insurer to give 45 days’ written notice of cancellation or non-renewal of flood insurance coverage to—

[(I) the insured; and

[(II) the regulated lending institution or Federal agency lender;

[(ii) information about the availability of flood insurance coverage under the national flood insurance program;

[(iii) a mortgage interest clause similar to the clause contained in a standard flood insurance policy under the national flood insurance program; and

[(iv) a provision requiring an insured to file suit not later than 1 year after date of a written denial of all or part of a claim under the policy; and

[(D) contains cancellation provisions that are as restrictive as the provisions contained in a standard flood insurance policy under the national flood insurance program.]

(8) **DEFINITIONS.**—*In this section:*

(A) **FLOOD INSURANCE.**—*The term “flood insurance” means—*

(i) Federal flood insurance; and

(ii) *private flood insurance.*

(B) *FEDERAL FLOOD INSURANCE.*—The term “Federal flood insurance” means an insurance policy made available under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

(C) *PRIVATE FLOOD INSURANCE.*—The term “private flood insurance” means an insurance policy that—

(i) is issued by an insurance company that is—

(I) licensed, admitted, or otherwise approved to engage in the business of insurance in the State in which the insured building is located, by the insurance regulator of that State; or

(II) eligible as a nonadmitted insurer to provide insurance in the home State of the insured, in accordance with sections 521 through 527 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 8201 through 8206);

(ii) is issued by an insurance company that is not otherwise disapproved as a surplus lines insurer by the insurance regulator of the State in which the property to be insured is located; and

(iii) provides flood insurance coverage that complies with the laws and regulations of that State.

(D) *STATE.*—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(c) *EXCEPTIONS TO PURCHASE REQUIREMENTS.*—

(1) *STATE-OWNED PROPERTY.*—Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Administrator. The Administrator shall publish and periodically revise the list of States to which this subsection applies.

(2) *SMALL LOANS.*—Notwithstanding any other provision of this section, subsections (a) and (b) shall not apply to any loan having—

(A) an original outstanding principal balance of \$5,000 or less; and

(B) a repayment term of 1 year or less.

(3) *DETACHED STRUCTURES.*—Notwithstanding any other provision of this section, flood insurance shall not be required, in the case of any residential property, for any structure that is a part of such property but is detached from the primary residential structure of such property and does not serve as a residence.

(d) *ESCROW OF FLOOD INSURANCE PAYMENTS.*—

(1) *REGULATED LENDING INSTITUTIONS.*—

(A) *FEDERAL ENTITIES RESPONSIBLE FOR LENDING REGULATIONS.*—Each Federal entity for lending regulation (after consultation and coordination with the Federal Financial Institutions Examination Council) shall, by regulation, direct that all premiums and fees for flood insurance under the National Flood Insurance Act of 1968, for residential improved real estate or a mobile home, shall be paid to the

regulated lending institution or servicer for any loan secured by the residential improved real estate or mobile home, with the same frequency as payments on the loan are made, for the duration of the loan. Except as provided in subparagraph (B), upon receipt of any premiums or fees, the regulated lending institution or servicer shall deposit such premiums and fees in an escrow account on behalf of the borrower. Upon receipt of a notice from the Administrator or the provider of the flood insurance that insurance premiums are due, the premiums deposited in the escrow account shall be paid to the provider of the flood insurance.

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

(i) if—

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

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

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

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

(ii) in the case of a loan that—

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

(II) is secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, if the residential improved real estate or mobile home is covered by a flood insurance policy that—

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

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

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

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

(IV) is a home equity line of credit;

(V) is a nonperforming loan; or

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

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

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

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

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

(e) PLACEMENT OF FLOOD INSURANCE BY LENDER.—

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

(2) PURCHASE OF COVERAGE ON BEHALF OF BORROWER.—If the borrower fails to purchase such flood insurance within 45 days after notification under paragraph (1), the lender or servicer for the loan shall purchase the insurance on behalf of the borrower and may charge the borrower for the cost of pre-

miums and fees incurred by the lender or servicer for the loan in purchasing the insurance, including premiums or fees incurred for coverage beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.

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

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

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

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

(5) **REVIEW OF DETERMINATION REGARDING REQUIRED PURCHASE.**—

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

(B) **EFFECT OF DETERMINATION.**—Any person to whom a borrower provides a letter issued by the Administrator pursuant to subparagraph (A), stating that the building or mobile home securing the loan of the borrower is not in an area having special flood hazards, shall have no obligation under this title to require the purchase of flood insurance for such building or mobile home during the period determined by the Administrator which shall be specified in the letter and shall begin on the date on which such letter is provided.

(C) **EFFECT OF FAILURE TO RESPOND.**—If a request under subparagraph (A) is made in connection with the origination of a loan and the Administrator fails to provide a letter under subparagraph (A) before the later of (i) the expiration of the 45-day period under such subparagraph, or

- (ii) the closing of the loan, no person shall have an obligation under this title to require the purchase of flood insurance for the building or mobile home securing the loan until such letter is provided.
- (6) APPLICABILITY.—This subsection shall apply to all loans outstanding on or after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.
- (f) CIVIL MONETARY PENALTIES FOR FAILURE TO REQUIRE FLOOD INSURANCE OR NOTIFY.—
- (1) CIVIL MONETARY PENALTIES AGAINST REGULATED LENDERS.—Any regulated lending institution that is found to have a pattern or practice of committing violations under paragraph (2) shall be assessed a civil penalty by the appropriate Federal entity for lending regulation in the amount provided under paragraph (5).
- (2) LENDER VIOLATIONS.—The violations referred to in paragraph (1) shall include—
- (A) making, increasing, extending, or renewing loans in violation of—
- (i) the regulations issued pursuant to subsection (b) of this section;
- (ii) the escrow requirements under subsection (d) of this section; or
- (iii) the notice requirements under section 1364 of the National Flood Insurance Act of 1968; or
- (B) failure to provide notice or purchase flood insurance coverage in violation of subsection (e) of this section.
- (3) CIVIL MONETARY PENALTIES AGAINST GSE'S.—
- (A) IN GENERAL.—If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the Director of the Federal Housing Finance Agency to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3), the Director of such Office shall assess a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.
- (B) DEFINITION.—For purposes of this subsection, the term “enterprise” means the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
- (4) NOTICE AND HEARING.—A penalty under this subsection may be issued only after notice and an opportunity for a hearing on the record.
- (5) AMOUNT.—A civil monetary penalty under this subsection may not exceed \$2,000 for each violation under paragraph (2) or paragraph (3).
- (6) LENDER COMPLIANCE.—Notwithstanding any State or local law, for purposes of this subsection, any regulated lending institution that purchases flood insurance or renews a contract for flood insurance on behalf of or as an agent of a borrower of a loan for which flood insurance is required shall be considered to have complied with the regulations issued under subsection (b).

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

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

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

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

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

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

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

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

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

(h) FEE FOR DETERMINING LOCATION.—Notwithstanding any other Federal or State law, any person who makes a loan secured by improved real estate or a mobile home or any servicer for such a loan may charge a reasonable fee for the costs of determining whether the building or mobile home securing the loan is located in an area having special flood hazards, but only in accordance with the following requirements:

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

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

(B) is made pursuant to a revision or updating under section 1360(f) of the floodplain areas and flood-risk zones or publication of a notice or compendia under subsection (h) or (i) of section 1360 that affects the area in which the

improved real estate or mobile home securing the loan is located or that, in the determination of the Administrator, may reasonably be considered to require a determination under this subsection; or

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

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

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NATIONAL FLOOD INSURANCE ACT OF 1968

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TITLE XIII—NATIONAL FLOOD INSURANCE

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CHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

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ESTABLISHMENT OF CHARGEABLE PREMIUM RATES

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

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

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

(b) Such rates shall, insofar as practicable, be—

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

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

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

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

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

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

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

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

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

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

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

(A) as provided in paragraph (4);

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

(C) in the case of a property that—

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

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

(I) decreased the amount of the deductible; or

(II) increased the amount of coverage; or

(iii) was misrated;

(2) the chargeable risk premium rates for flood insurance under this title for any properties initially rated under section 1307(a)(2) within any single risk classification, excluding properties for which the chargeable risk premium rate is not less than the applicable estimated risk premium rate under section 1307(a)(1), shall be increased by an amount that results in an

average of such rate increases for properties within the risk classification during any 12-month period of not less than 5 percent of the average of the risk premium rates for such properties within the risk classification upon the commencement of such 12-month period;

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

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

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

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

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

(1) includes catastrophic loss years; and

(2) shall be computed in accordance with generally accepted actuarial principles.

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

(1) on a property located in an area not previously designated as having special flood hazards and that, pursuant to any issuance, revision, updating, or other change in a flood insurance map, becomes designated as such an area; and

(2) where such flood insurance premium rate is calculated under subsection (a)(1) of section 1307 (42 U.S.C. 4014(a)(1)), shall for the first policy year be the preferred risk premium for the property and upon renewal shall be calculated in accordance with subsection (e) of this section until the rate reaches the rate calculated under subsection (a)(1) of section 1307.

(j) PREMIUMS AND REPORTS.—In setting premium risk rates, in addition to striving to achieve the objectives of this title the Administrator shall also strive to minimize the number of policies with annual premiums that exceed one percent of the total coverage pro-

vided by the policy. For any policies premiums that exceed this one percent threshold, the Administrator shall report such exceptions to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

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

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

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

(1) **REPORT.**—Not later than 18 months after the date of the enactment of this section and semiannually thereafter, the Administrator shall monitor and report to Committee on Financial Services of the House Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, the Administrator's assessment of the impact, if any, of the rate increases required under subparagraphs (A) and (D) of section 1307(a)(2) and the surcharges required under section 1308A on the affordability of flood insurance for—

(A) small businesses with less than 100 employees;

(B) non-profit entities;

(C) houses of worship; and

(D) residences with a value equal to or less than 25 percent of the median home value of properties in the State in which the property is located.

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

(n) **EFFECT OF PRIVATE FLOOD INSURANCE COVERAGE ON CONTINUOUS COVERAGE REQUIREMENTS.**—*For purposes of applying any statutory, regulatory, or administrative continuous coverage requirement, including under section 1307(g)(1), the Administrator shall consider any period during which a property was continuously covered by private flood insurance (as defined in section 102(b)(8) of*

*the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(b)(8))
to be a period of continuous coverage.*

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