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Flood Insurance Reform: Analysis and Comparison of 109th Congress Bills (H.R. 4973 and S. 3589)

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Flood Insurance Reform: Analysis and Comparison of 109th Congress Bills (H.R. 4973 and S. 3589)

Summary

In 1968, Congress established the National Flood Insurance Program (NFIP) as a response to mounting flood losses, escalating costs of disaster relief to the general taxpayers, and as an alternative to ad hoc federal disaster assistance. In the wake of Hurricanes Katrina, Rita, and Wilma in 2005, the NFIP faces unprecedented financial and regulatory strains. The nation's attention has now focused on disaster impacts and costs, as well as both the strengths and weaknesses of the NFIP in managing and financing the nation's flood risk. Those concerned about program weaknesses cite the increasing need to borrow from the U.S. Treasury, substantial premium cross-subsidies among classes of policyholders, outdated flood insurance rate maps, allegations of uneven compliance with mandatory purchase requirements, questions as to the performance and efficiency of the Write Your Own program, and a need to put the NFIP on sounder financial footing.

At the behest of the Congress, FEMA has from time to time examined the program's contingent liabilities and recommended ways to provide financial stability to the flood insurance program. For example, the NFIP's borrowing authority is currently the exclusive financing arrangement for potential catastrophic losses. In recent years FEMA has identified alternative financing arrangements, but Congress has yet to act on any proposal.

Members of the 109th Congress are considering H.R. 4973 and S. 3589 — the Flood Insurance Reform and Modernization Act of 2006 — which seek to enhance the NFIP's effectiveness and limit taxpayer liability for claims. The main thrust of the reform effort is to have the program satisfy traditional criteria for actuarial soundness by eliminating some or all of the premium subsidy provided to certain properties insured under the NFIP. The Congressional Budget Office (CBO) estimates the NFIP provides a $1.3 billion annual premium subsidy. CBO suggests that eliminating the subsidies on all properties, including nonresidential and non-primary (i.e., vacation or second home), would result in generating sufficient premiums to cover the long-term future obligations of the NFIP, but not necessarily enough to cover past losses or future catastrophic loss years. Some stakeholder groups have expressed concerns about making abrupt changes to the NFIP without full knowledge of potential unintended adverse effects. Others argue, however, that the NFIP must be reauthorized by Congress in 2008, so any reforms to the program approved now could be revisited during the 110th Congress.

This report provides an overview of the NFIP, focusing on factors that may affect the NFIP's actuarial soundness or that may inhibit its ability to provide flood insurance to property owners. This is followed by a summary and side-by-side comparison of the House and Senate versions of the Flood Insurance Reform and Modernization Act of 2006 — H.R. 4973 and S. 3589.

This report will be updated as events warrant.

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Background

The 2005 Gulf Coast hurricanes were catastrophic disasters that required substantial federal disaster relief and unusually large claims payouts under the National Flood Insurance Program (NFIP). Federal allocations[1] for post-disaster assistance now total $109 billion, plus more than $8 billion in tax relief.[2] This $109 billion amount includes $89.6 billion in post-disaster assistance and $19.3 billion in insurance claim payments under the NFIP. As of August 31, 2006, the NFIP had borrowed $16.75 billion from the U.S. Treasury — an amount that far exceeds the aggregate amount of claims paid in the history of the program.[3] The $89.6 billion appropriated by Congress includes $11.5 billion in U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funds for five states (Alabama, Florida, Louisiana, Mississippi, and Texas) affected by Hurricanes Katrina, Rita, and Wilma.[4] The majority of the CDBG funds will be used to compensate homeowners in Louisiana and Mississippi for the value of their homes, up to their insured value or $150,000, whichever is less.[5] Grants are now available to thousands of homeowners outside of Special Flood Hazard Areas,

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[1] The term federal *allocation* is used rather than *spending* to refer to the fact that this is federal intent or spending priorities for the hurricane recovery effort. These figures as current as of August 31, 2006.

[2] Matt Fellowes and Amy Liu, "Federal Allocations in Response to Katrina, Rita and Wilma: An Update," *The Brookings Institutions*, located at [http://www.brookings.edu/metro/pubs/20060712_katrinafactsheet.pdf#search=%22community%20development%20block%20grant%20and%20katrina%20flood%20relief%22].

[3] U.S. Government Accountability Office, *Hurricane Katrina: GAO's Preliminary Observations Regarding Preparedness, Response, and Recovery*, GAO-06-442T, (Washington: Mar. 8, 2006), p. 38.

[4] The CDBG funds were allocated as follows among the Gulf states: Alabama, $74.4 million; Florida, $82.9 million; Louisiana, $6.2 billion; Mississippi, $5.1 billion; and Texas, $74.5 million. For more information, see CRS Report RL33330, *Community Development Block Grant Funds in Disaster Relief and Recovery*, by Eugene Boyd.

[5] On June 15, 2006, President Bush signed into law the fourth emergency supplemental, for $19.8 billion, in support of short- and longer-term needs of the Gulf Coast. The $19.8 billion includes $5.2 billion in additional CDBG funds, with $4.2 billion intended for Louisiana and the remaining $1 billion to support the renovation and construction of affordable rental housing in the affected states.

commonly known as the flood plain or the flood zone, who were not required by federal law to purchase flood insurance.[6]

In addition to federal appropriations in support of short- and longer-term needs of the Gulf Coast, legislative efforts are now underway in Congress to reform the NFIP so as to provide for its fiscal solvency and actuarial soundness, while protecting current policyholders and taxpayers. Some stakeholder groups have expressed concerns about making abrupt changes to the NFIP without full knowledge of potential unintended adverse effects that could undermine the program. Others argue that because the NFIP must be reauthorized by Congress in 2008, any reforms to the program approved now could be revisited during the 110th Congress.

Catastrophic Losses and the NFIP

In the aftermath of Hurricanes Katrina, Rita, and Wilma, policymakers have expressed broad concerns about the financial condition of the NFIP, particularly with respect to potential future catastrophic losses and the program's ability to meet its financial obligations to the Treasury and to its policyholders. In an attempt to ensure that FEMA has the financial resources to cover current obligations (i.e., policyholder claims and operational expenses, but not debt service), Congress passed and the President signed into law legislation to increase the NFIP's borrowing authority to allow the agency to continue to pay flood insurance claims: first to $3.5 billion in September 20, 2005;[7] to $18.5 billion on November 21, 2005;[8] and finally to $20.775 billion on March 23, 2006.[9] FEMA estimates that the NFIP will need about $3 billion in additional borrowing authority in late 2006 and early 2007 to pay the remaining claims from the 2005 hurricanes.[10]

Under current law, FEMA must repay any borrowed funds (with interest) as it collects premiums. The Congressional Budget Office calculates that FEMA is unlikely to repay the funds borrowed to pay 2005 hurricane-related claims within the next 10 years.[11] Even if FEMA increased flood insurance rates up to the maximum amount allowed by law (10% per year), the program would still not have sufficient funds to cover future obligations for policyholder claims, operating expenses, and

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[6] In order to qualify for the $150,000 compensation, the home must: (1) be outside the flood zone established by the federal government; (2) be owner-occupied; and (3) have had homeowner or similar insurance coverage at the time of Katrina's landfall. These criteria were established to eliminate the possibility of assistance to homeowners who lived within a known flood area and yet did not maintain flood insurance or homeowners who did not maintain standard home insurance.

[7] P.L. 109-65; 110 Stat. 1998.

[8] P.L. 109-106; 119 Stat. 2288.

[9] P.L. 109-208; 120 Stat. 317.

[10] See Letter from Donald B. Marron, Acting Director of Congressional Budget Office, to Honorable Judd Gregg, Chairman, Committee on the Budget, March 31, 2006, located at [http://www.cbo.gov/ftpdocs/72xx/doc7233/05-31-NFIPLetterGregg.pdf].

[11] Ibid.

interest on borrowed debt stemming from the 2004 and 2005 hurricane seasons.[12] Congress has been encouraged to consider the forgiveness of NFIP's Treasury borrowing by advocates who point to the avoidance of billions of dollars in flood losses that would otherwise have been paid by the Treasury and taxpayers. Economists observe that debt forgiveness would constitute an explicit subsidy from general taxpayer funds, with federal budgetary consequences.

Recognizing the unprecedented financial and regulatory challenges facing the NFIP, and the exposure of the federal government to future claims from another catastrophic loss year, most insurance market analysts and policymakers appear to agree that this 38-year-old program is in need of an overhaul. Those concerned about program weaknesses cite:

- increased need to borrow from the U.S. Treasury,
- substantial premium cross-subsidies among classes of policyholders,
- outdated flood insurance rate maps that will form the basis for making decisions about where and how to rebuild the Gulf Coast,
- allegations of uneven compliance with mandatory purchase requirements,
- questions as to performance and efficiency of the Write Your Own program, and
- general need to put the program on sounder financial footing.

This report provides an overview of the NFIP, focusing on those factors that might undermine the NFIP's fiscal and actuarial soundness or that may inhibit its ability to provide flood insurance to property owners. This is followed by a summary and side-by-side comparison of the House and Senate versions of the Flood Insurance Reform and Modernization Act of 2006 — H.R. 4973 and S. 3589.

The National Flood Insurance Program

After several decades of massive investments in area flood control facilities like dams, levees, and floodway improvements with the aim of modifying nature's flood hazard areas, Congress established the National Flood Insurance Program (NFIP) with the 1968 passage of the National Flood Insurance Act.[13] The availability of federally subsidized flood insurance signaled a shift in federal policy towards flood plain avoidance and a public policy response to three forces:

- continued development of the nation's floodplains,
- lack of private insurance options for flood insurance on reasonable terms and conditions, and
- escalating cost of ad hoc federal disaster assistance.[14]

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[12] Ibid.

[13] P.L. 90-448; 82 Stat. 572.

[14] Ibid, Section 1302(b).

Policymakers envisioned the use of insurance to facilitate long-range flood-mitigation land use policies. Despite extensive flood management efforts and spending, however, the number of floods and flood-related damage continues to increase.[15] Some disaster experts have speculated that the trend is the result of climate change, while others say population growth and development and federal policy are to blame.

Organization and Structure

The NFIP consists of a three-pronged strategy: flood risk assessment and mapping, financing flood risk through insurance, and land use and building construction measures that constrict the development of land exposed to flood hazard. Taken together, this strategy allows for residential construction in known floodplains, but with the proviso that the property must be constructed according to building code regulation that incorporates flood-proofing requirements. The NFIP was broadened and modified with the passage of the Flood Disaster Protection Act of 1973[16], and other major reform legislation in 1977,[17] 1994,[18] and 2004.[19]

Today, federal flood insurance is currently available in 20,118 participating communities to help individuals and small businesses recover following a flood. FEMA officials point out that the NFIP has realized significant savings both to itself and property owners by reducing the cost of disaster relief. The basic requirement of the flood management program (and access to federal flood insurance) is that communities adopt and enforce minimum land use and building code regulation to prevent new development from increasing the flood threat and to protect new and existing buildings from anticipated flood events. In practical terms, new residential construction in special flood hazard areas (SFHA) must be elevated to or above the level water would reach in a flood that occurs with a 1% annual chance. This water level is called the Base Flood Elevation (BFE). The NFIP also requires that existing residential structures that are below BFE be raised to that level if they are substantially damaged or improved (i.e., cost of the improvement or damage equals or exceeds 50% of the market value of the building before construction starts on the improvement).

The NFIP's Standard Flood Insurance Policy (SFIP), which includes the General Property and Dwelling Forms, covers: (1) direct physical losses caused by flood; (2) losses resulting from flood-related erosion caused by waves or currents of water activity exceeding anticipated cyclical levels; or (3) losses caused by a severe storm,

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[15] R.A. Pielke, Jr., M.W. Downton, and J.Z. Barnard Miller, 2002: *Flood Damage in the United States, 1926-2003: A Reanalysis of National Weather Service Estimates*, located at [http://www.flooddamagedata.org/flooddamagedata.pdf].

[16] P.L. 93-234; 87 Stat. 975.

[17] Title VII of the Housing and Community Development Act of 1977, P.L. 95-128; 91 Stat. 1147.

[18] P.L. 103-325; 108 Stat. 2255.

[19] P.L. 108-264; 116 Stat 712.

flash flood, or abnormal tidal surge which result in flooding.[20] The policy covers damages to building property, up to $250,000, and personal property (contents), up to $100,000.[21] Structures and related contents of small businesses are covered for $500,000 each, for a total coverage of $1,000,000. Buildings are covered for replacement cost, but coverage for content is available on an actual cash value basis only.[22]

Policyholders, Premium Subsidy, and Actuarial Soundness

Since 1978, the NFIP has grown from 1.4 million policyholders and $50 billion in risk exposure to 4.9 million policyholders and approximately $900 billion in risk exposure, with $2.3 billion in annual premiums.[23] Participation in the NFIP increased sharply during the 1970s and 1980s after Congress passed the Flood Disaster Protection Act of 1973[24] to require known flood-prone communities to participate in the program, expand the program by substantially increasing limits of coverage and the total amount of insurance authorized to be outstanding, and restrict the use of federal funds in floodplain areas unless the property was protected by flood insurance.[25]

Premium Subsidies. The 1973 act also explicitly authorized subsidized premiums on pre-Flood Insurance Rate Map (FIRM) structures to encourage communities to join the program.[26] In addition, pre-FIRM structures are not required to comply with existing construction requirements. After the FIRM is completed, however, newly constructed structures in the community are required to be built according to the NFIP's building standards (i.e., the lowest floor of a newly constructed structure must be elevated to or above the base flood level, BFE).

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[20] The *Dwelling Form* is used to insure single family dwellings, two-to-four family residential buildings, residential condominium units, and one-to-four family buildings under construction. The *General Property* Form is used to insure residential buildings, nonresidential condominium buildings, nonresidential condominium units, buildings under construction, non-household contents in a residential building, and household contents in a nonresidential building.

[21] Items such as artwork, photographs, memorabilia, rare books, jewelry, watches, gems, articles of gold, silver, or platinum and furs are limited to $2,500 coverage in the aggregate.

[22] *Replacement cost* is defined as the cost to replace the property on the same premises with other property of comparable quality used for the same purpose. *Actual cash value* is the replacement cost minus any depreciation. It represents the cost to replace with like kind and quality, less depreciation.

[23] FEMA uses 1978 as the starting date for collecting NFIP data. This was the year the program was transferred from the Department of Housing and Urban Affairs. For more policy and claim statistics, see [http://www.fema.gov/business/nfip/statistics/pcstat.shtm].

[24] P.L. 93-234; 87 Stat. 975.

[25] U.S. Congress, Committee on Banking and Currency, *Flood Disaster Protection Act of 1973*, report to accompany H.R. 8449, 93rd Cong., 1st sess., H.Rept. 93-359, June 29, 1973 (Washington: GPO, 1973), p. 1.

[26] Subsidized rates are available for the first $35,000 of coverage for a single-family pre-FIRM property. Any insurance above that amount must be purchased at actuarial rates.

Section 103 of the 1968 act reads as follows:

> (c) Notwithstanding any other provision of this title, the chargeable rate with respect to any property, the construction or substantial improvement of which the Secretary determines has been started after December 31, 1974, or the effective date of the initial rate map published by the Secretary under paragraph (2) of section 1360 for the area in which such property is located, whichever is later, shall not be less than the applicable estimated risk premium rate for such are (or subdivision thereof) under section 1307(1)(1).[27]

About 1.2 million of the 4.9 million policyholders (24.4%) pay premiums that do not cover the full risk of insuring their properties. The Congressional Budget Office (CBO) estimates that the policy of subsidizing pre-FIRM properties produces a revenue shortfall of about $1.3 billion each year.[28] FEMA would have to raise annual average premiums from about $710 to $1,800 to cover the revenue shortfall.[29] Even with this higher pricing, the NFIP would still not generate premium income sufficient to build reserves for potential catastrophic losses.

Actuarial Soundness. By design, the NFIP does not conform to traditional insurance industry criteria for actuarial soundness in that the program does not collect sufficient premium income to build reserves fully to meet long-term future expected losses. FEMA's flood insurance pricing strategy and financial goal are instead designed to generate premiums sufficient at least to cover expected losses and expenses relative to what is called the "historical average loss year," which approximates the average annual losses experienced since 1978.[30]

The NFIP typically generates premium surpluses in less-than-average loss years and uses this surplus to pay claims in higher loss years. According to FEMA, between 1978 and July 2006, the NFIP experienced many heavy-loss years, but no catastrophic flood event until Hurricanes Katrina, Rita, and Wilma.[31] FEMA defines a catastrophe loss year as one which the program incurs claims losses greater than $5.5 billion.

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[27] P.L. 93-234, 82 Stat. 576, Section 103.

[28] See Letter from Donald B. Marron, Acting Director of Congressional Budget Office to Honorable Judd Gregg, Chairman, Committee on the Budget, March 31, 2006, located at [http://www.cbo.gov/ftpdocs/72xx/doc7233/05-31-NFIPLetterGregg.pdf].

[29] U.S. Congressional Budget Office, *The Budgetary Treatment of Subsidies in the National Flood Insurance Program*, (Washington: GPO, 1977), p. 6, [http://www.cbo.gov/ftpdocs/70xx/doc7026/01-25-FloodInsurance.pdf].

[30] Thomas L. Hayes and Shama S. Sabade, *National Flood Insurance Program Actuarial Rate Review*,[http://www.fema.gov/pdf/nfip/rate_rev04.pdf].

[31] Federal Emergency Management Agency, *Significant Flood Events: 1978-July 31, 2006*, [http://www.fema.gov/business/nfip/statistics/sign1000.shtm].

Borrowing

Table 1 shows the history of NFIP borrowing from and repayment to the U.S. Department of Treasury. When faced with insufficient funds to pay claims and expenses, as the NFIP did in 2004 and 2005, FEMA uses its statutory authority to borrow from the Treasury to pay approved claims. The $300 million that FEMA borrowed to pay 2004 flood claims was substantially repaid when Hurricanes Katrina, Rita, and Wilma forced the agency to borrow another $16.75 billion.

Table 1. Treasury Borrowing and Repayments Under the National Flood Insurance Program

(as of August 31, 2006)

Fiscal Year	Amount Borrowed	Amount Repaid	Cumulative Debt
Prior to FY1981[a]	$ 917,406,008	$ 0	$ 917,406,088
1981	164,614,526	624,970,099	457,050,435
1982	13,915,000	470,965,435	0
1983	50,000,000	0	50,000,000
1984	20,000,000	36,879,123	213,120,877
1985	0	213,120,877	0
1986-1993	0	0	0
1994 [b]	100,000,000	100,000,000	0
1995	265,000,000	0	265,000,000
1996	423,600,000	62,000,000	626,600,000
1997	530,000,000	239,600,000	917,000,000
1998	0	395,000,000	522,000,000
1999	400,000,000	381,000,000	541,000,000
2000	345,000,000	541,000,000	345,000,000
2001	600,000,000	345,000,000	600,000,000
2002	50,000,000	650,000,000	0
2003-2004	0	0	0
2005[c]	300,000,000	75,000,000	225,000,000
2006 to date	16,750,000,000	$0	$16,975,000,000
Total	**$21,109,535,534**	**$4,134,535,534**	**$16,975,000,000**

Source: Federal Emergency Management Agency Office of Legislative Affairs.

Note: Borrowing through 1985 was repaid from congressional appropriations. Borrowing since 1994 has been repaid from premium and other income. There was no borrowing from 1985 to 1994.

[a]Balance forward from U.S. Department of Housing and Urban Development.

[b]Of the $100 million borrowed, only $11 million was needed to cover obligations.

[c]As of August 31, 2005, FEMA had outstanding borrowing of $225 million with cash on hand totaling $289 million. FEMA had substantially repaid the $225 million borrowed when Hurricanes Katrina, Rita, and Wilma struck, resulting in $16.75 billion in borrowing.

Repetitive Loss Properties

Another factor that affects the NFIP's actuarial soundness has been the cost of insuring repetitive loss properties (RLPs). FEMA defines an RLP as a property that is covered by a NFIP insurance policy and that has been the subject of two or more flood claims of at least $1,000 over a rolling 10-year period. Although RLPs comprise only about 1% of all insured properties, they account for 25% of all claims paid.[32] FEMA reports that properties that have received multiple insurance claim payments account for an average of $200 million in claims each year. Additionally, some 25% of all current NFIP policies do not pay actuarial rates for their coverage, and thus are subsidized by the 75% of other policyholders.[33] Most insurance market experts agree that repetitive flood claims and very large claims payouts will likely result in increased cost of flood insurance for everyone and accounts for a significant factor affecting the stability of the NFIP.

The 2004 Flood Reform Act established a pilot program requiring owners of RLPs to elevate, relocate, or demolish houses.[34] The Repetitive Flood Claims (RFC) grant program was created under this act with the aim of reducing the long-term risk of flood damage caused by RLPs. Congress appropriated $10 million to support activities under the RFC program. RFC funds may be used for activities that reduce flood-related property damages to structures that are located within communities that cannot meet the requirements of the Flood Mitigation Assistance (FMA) program for either cost share or capacity to manage the activities.[35]

The FY2006 RFC funding priority is to fund the acquisition of severe repetitive loss properties (SRLPs), which are defined as residential properties that have at least four NFIP claim payments over $5,000 each, at least two of which have occurred within any 10-year period, and with cumulative claims payments exceeding $20,000. In addition, at least two separate claims payments would have to have been made, with the cumulative amount of such claims exceeding the value of the property. Nonresidential properties that meet the same claims thresholds as residential severe repetitive loss properties are also eligible for RFC grants.

Mandatory Purchase Requirement

Among the NFIP reforms being considered in Congress is one that would more broadly spread the risk by increasing the policyholder base, through both mandatory

[32] See Association of State Floodplain Managers, Inc., National Repetitive Flood Loss Mitigation Legislation, [http://www.floods.org/policy/ASFPM_Reploss_senate01-13.pdf#search=`repetitive%20flood%20losses`].

[33] Ibid.

[34] U.S. Department of Homeland Security, "Pilot Program for Mitigation of Severe Repetitive Loss Properties," *Federal Register*, vol. 69, No. 178, Sept. 15, 2004, p. 55642.

[35] U.S. Department of Homeland Security Appropriations Act of 2006, P.L. 109-90, 119 Stat. 2079.

purchase and voluntary purchase.[36] Currently, property owners who obtain loans from federally regulated lending institutions or who receive federal financial assistance for acquisition or construction purposes in special flood hazard areas (SFHAs) in communities that participate in the NFIP are required to purchase flood insurance for their outstanding mortgage balance, up to a maximum of $250,000 in coverage for single family homes.[37]

In order to increase the policyholder base, some observers have gone as far as to suggest that all homes (and businesses) in designated flood plains purchase federal flood insurance, and not just homes with mortgages owned or serviced by federally-regulated institutions. FEMA estimates that such an effort could add an estimated 4 to 6 million properties located in areas of lower risk of flooding (i.e., 250-year or 500-year floodplain), including properties protected by structural flood controls like dams and levees. Currently, the mandatory purchase requirement applies only to properties in the 1%, or 100-year floodplain.

Flood Map Modernization

FEMA is charged with identifying and mapping the nation's flood hazards.[38] Flood maps have been used for 35 years under the NFIP by insurance agents and companies, lenders, property owners, flood zone determination firms, real estate professionals, floodplain managers, community planners, engineers, and disaster and emergency response officials, to determine the flood risk of individual properties or to make local land use decisions. In the wake of the 2005 hurricanes, some disaster experts and policymakers have expressed concerns about the accuracy of flood maps that might not incorporate the latest engineering analyses or reflect changes caused by development and natural factors that alter the terrain. This situation is of concern to policymakers because the 1994 Reform Act mandated that FIRMs for each community be reevaluated at least once every five years, but this has not happened.

In 1997, FEMA began a multi-year map modernization program to improve and update the nation's flood maps. Congress first appropriated funds for map modernization in FY2003, with additional funding provided in FY2004, FY2005, and FY2006. In response to the 2004 and 2005 hurricanes, however, FEMA had to undertake a mid-course review of the flood map modernization plan. This review and recommendations reflected the concerns of stakeholder groups who wanted greater flexibility in determining areas to be mapped, establishment of a national

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[36] American Institutes for Research, *The National Flood Insurance Program's mandatory Purchase Requirement: Policies, Processes, and Stakeholders*, located at [http://www.fema.gov/pdf/nfip/mandpurch_0305.pdf].

[37] The mandatory purchase requirement was shaped by three major legislative measures: the National Flood Insurance Act of 1968 (P.L. 90-448; 82 Stat. 572); the Flood Disaster Protection Act of 1973 (P.L. 93-234; 87 Stat. 975); and the National Flood Insurance Reform Act of 1994 (P.L. 103-325; 108 Stat. 2255).

[38] Flood hazard areas are identified and depicted using statistical analyses of records of riverflow, storm tides, and rainfall, as well as floodplain topographic surveys and hydrologic and hydraulic analyses.

standard for mapping floodplain boundaries, and an increase in the level of engineering analysis for communities at greater risk of flooding.

NFIP Multi-Year Comprehensive Evaluation

At the behest of the Congress, FEMA has from time to time examined the flood insurance program's contingent liabilities and recommended ways to provide financial stability to the program. The NFIP's borrowing authority is the exclusive financing arrangement for the potential catastrophic losses. FEMA has in recent years identified alternative financing arrangements, but Congress has yet to act on any proposal. These approaches include annual appropriations, commercial bank financing when losses exceed premium income plus some dollar retention level, and the use of financial reinsurance and catastrophe bonds to smooth out the NFIP's cash flow.

Section 578 of the National Flood Insurance Reform Act of 1994 required FEMA to:

> ... conduct a study of the economic effects that would result from increasing the premium rates for flood insurance coverage made available under the National Flood Insurance Program (NFIP) for pre-FIRM structures to the full actuarial risk based premium.[39]

This study of the impact of imposing actuarial rate for pre-FIRM structures was performed by PriceWaterhouse Coopers.[40] There were three major findings. First, flood insurance premiums would rise substantially for pre-FIRM structures exposed to considerable flood risk as a result of subsidy elimination. Second, national participation rates for all SFHA structures would grow from 28% in 1997 to 40% in 2022 in the absence of subsidy elimination, but if the subsidy were eliminated immediately, the participation rate would drop from 26% in 1997 to about 20% in 1998; therefore the subsidy should be phased out over time. Third, the property values of pre-FIRM structures would decline by 4% in 1998 if there were an immediate subsidy elimination. It would appear that these findings might have influenced a policy shift in Congress and the administration towards reducing or eliminating the subsidy on non-primary and nonresidential properties.

Several years ago, FEMA began the first major evaluation of the program's performance and goals since its inception.[41] According to FEMA, the purpose of the overall program evaluation was to perform research and to develop data and other information needed to support long-term planning and policymaking. The evaluation sought to assess the NFIP in the following six areas: (1) occupancy and use of floodplain, (2) cost and consequences of flooding, (3) insurance rating and indemnification function, (4) floodplain management and enforcement, (5) hazard

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[39] P.L. 103-325; 108 Stat 2255.

[40] PriceWaterhouse Coopers, *Study of the Economic Effects of Charging Actuarially Based Premium Rates for Pre-FIRM Structures*, [http://www.fema.gov/pdf/nfip/execsumy.pdf].

[41] American Institutes for Research, *Design for the Evaluation of the National Flood Insurance Program*, located at [http://www.fema.gov/pdf/nfip/nfipeval_intro.pdf].

identification and risk assessment, and (6) marketing and communications. This multiyear evaluation, which is being managed under a contract by the American Institute for Research, is ongoing and will likely take several more years to complete.

Most disaster experts appear to agree that demands on the NFIP are not likely to decline, as weather-related disasters, particularly hurricanes, are said by some to be worsening in frequency and severity, population continues to grow in flood-prone areas, and property values continue to rise. In this environment of uncertainty, public policy attention has focused on finding ways to address the financial needs of the program for the next anticipated catastrophic flood event.

Major Legislative Proposals in 109th Congress

Table 2 provides a side-by-side comparison of the major provisions of H.R. 4973 and S. 3589 — the House and Senate versions, respectively, of the Flood Insurance Reform and Modernization Act of 2006, which propose to modify the NFIP to make the program financially solvent and enhance its effectiveness, while limiting taxpayer liability for claims. Both bills were placed on the Senate legislative calender on June 28, 2006, making them eligible for floor action at any time.

H.R. 4973

On June 27, 2006, the House passed H.R. 4973, the Flood Insurance Reform and Modernization Act, which would modify the NFIP by implementing changes to bring more consumers into the system and gradually reduce subsidies for properties built before Flood Insurance Rate Maps (FIRMs) were developed. H.R. 4973 would increase the NFIP's borrowing authority from the U.S. Treasury from $18.5 billion to $25 billion to cover claims from the 2005 hurricane season, and increase the dollar limits on the amounts of coverage available for residential property, from $250,000 (structure) and $100,000 (contents) to $335,000 and $135,000 for any single-family dwelling, and from $500,000 to $670,000 for structures and related contents of a nonresidential property.

H.R. 4973 includes provisions aimed at moving the program to actuarial rates for certain properties and updating the nation's flood maps. Under H.R. 4973, FEMA would be required to review the nation's flood maps, and for the first time, map the nation's 500-year floodplain. The bill would authorize the appropriation of $300 million a year over the 2007-2012 period for updating flood maps to include the 500-year floodplain and areas that would be flooded if a dam or levee failed, and require FEMA to maintain and publish an inventory of U.S. levees.

H.R. 4973 would increase enforcement tools made available to bank regulators at both the federal and state levels. Lenders would face higher penalties for noncompliance with the NFIP's mandatory flood insurance purchase requirement. The current level of $350 per violation would increase to $2,000 per violation, with a $1 million per institution cap on penalties in any given year. The $1 million cap, however, would not apply to institutions for a calendar year if in any three of the last five calender years the institution was assessed a penalty of at least $1 million. In addition, lenders would be required to notify borrowers of requirements that flood insurance is available to all homeowners, and not just those in 100-year floodplain, as part of the Real Estate Settlement Act (RESPA) requirements.[42]

The House bill would also phase in actuarial rates for commercial and non-primary residences and create new categories of optional coverage, such as business interruption coverage, necessary increase in living expenses, basement improvements, and replacement cost of contents. Actuarial rates would be phased in after FEMA submits a report to Congress (not the date of legislation enactment). The bill would instruct FEMA to establish an appeals process; implement specified minimum training and education standards for insurance agents selling flood insuranc; report to Congress regarding implementation of each provision of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004;[43] and identify each regulation, order, notice, and other material issued by FEMA in implementing the act.

Finally, H.R. 4973 would require the Government Accountability Office (GAO) to study coverage for so-called "pre-FIRM" structures built or substantially improved on or before December 31, 1974, or before the effective date of an initial flood insurance rate map (FIRM) for the area. GAO also would be required to study extending the mandatory purchase requirement to properties located in flood zones protected by dams or levees. In addition, the bill would direct FEMA to report to Congress twice a year on the financial status of the NFIP.

S. 3589

On May 25, 2006, the Senate Committee on Banking, Housing, and Urban Affairs favorably reported S. 3589, the Flood Insurance Reform and Modernization Act of 2006. The bill was placed on the legislative calendar under general orders on June 28, 2006. This bill would eliminate premium subsidies on non-primary residences, businesses, and severe repetitive loss properties, and forgive FEMA's Treasury borrowing debt for claims arising from the 2005 hurricane season. In addition, S. 3589 would:

- make the NFIP more actuarially sound by phasing out premium subsidies on vacation homes, businesses, and severe repetitive loss properties built before the introduction of flood insurance rate maps (FIRM) on or before December 31, 1974, or before the effective date of an initial FIRM for the area;

- address often outdated and inaccurate flood maps that are used to price insurance by requiring that flood maps be updated to allow the program to transition to more accurate pricing of the insurance;

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[42] A growing number of Americans are exposed to flood risk due to unprecedented rains that threaten levees and dams. The areas behind structural flood control measures heretofore were not considered in the 100-year floodplain, so residents did not have to comply with the mandatory purchase requirement under the NFIP.

[43] PL 108-264; 118 Stat. 712.

- establish a mandatory Reserve Fund to provide additional funding to pay claims during catastrophic loss years without further need to seek assistance from U.S. taxpayers in the future;
- increase enforcement tools available to bank regulators at both the federal and state levels by requiring that flood insurance premiums be escrowed during the life of mortgages;
- increase the civil monetary penalties regulators may levy against lenders who fail to comply with the program's mandatory purchase requirements;
- require state-chartered lenders to maintain flood insurance coverage on all mortgages located within the 100-year floodplain;
- require FEMA to participate in (nonbinding) mediation programs to help homeowners resolve claims disputes such as those involving a determination of the cause of damage — whether wind or water; and
- require GAO to conduct several studies (reports and audits) designed to give Members of Congress the information they will need to develop options for future changes to the program when it comes up for reauthorization in 2008.

The key difference between the House and Senate bills is that the House bill would increase the NFIP's borrowing authority to $25 billion and require the Director of FEMA to study and develop a plan to repay borrowed debt, while the Senate bill would forgive about $21 billion of NFIP debt and establish a reserve fund for future catastrophe flood losses. The Senate bill would impose greater premium rate structural reforms than the House-passed reform legislation.

Comparison and Analysis of Bills

While H.R. 4973 is expected to be less costly for homeowners, it does include several amendments that are of concern to private insurers, the real estate industry, mortgage lenders, and the Bush Administration. The real estate industry is generally concerned about efforts to expand the NFIP's mandatory purchase requirement to include low-risk areas (500-year floodplain or 0.2% chance of flood) located in areas behind dams and levees. Insurers are concerned about provisions that call for: (1) an "investigation" by the inspector general of the Department of Homeland Security, rather than a study, into whether Write Your Own insurers that administer the program improperly attributed damage to flooding (which the federal government pays) instead of wind (which the insurers would pay) in the wake of Hurricanes Katrina and Rita; (2) extension of the deadline for filing for proof-of-loss for up to 180 days following a disaster and prohibition of NFIP denial of claims solely for failing to meet the deadline, and making it retroactive to claims dating from Hurricane Isabel in 2003; and (3) broadening of the phase-out of premium subsidies applicable to primary residences when they are sold.

Mortgage lenders are concerned about the lack of a "safe harbor" provision in S. 3589 for "technical noncompliance" and "unintentional clerical error." They have also expressed concerns about expanding the mandatory purchase requirement to state-chartered institutions not insured by the Federal Deposit Insurance Corporation (FDIC), the requirement for mortgage companies to escrow for hazard insurance, and requiring lending institutions to notify homeowners about residential risks in the 500-year floodplain.

Finally, while the Bush Administration has expressed support for flood insurance reform legislation, a "Statement of Administration Policy" released on June 27, 2006, raised concerns over provisions in H.R. 4973 that would add new lines of coverage, increase coverage limits, and require FEMA claims adjusters to participate in state-sponsored mediation at the request of a state insurance commissioner.[44] The Administration also raised constitutional concerns involving separation of powers between the branches of the federal government, and between the states and the federal government. The issue of concern is that the Congress would be conferring on state officials the authority to compel agents of the federal executive into the state's service.

It is unlikely that either bill will be taken up during the lame duck session of the 109th Congress, but they may serve as a springboard for action by the 110th Congress during legislative efforts to reauthorize the NFIP.

[44] *Executive Office of the President, Office of Management and Budget*, "Statement of Administration Policy: H.R. 4973 — Flood Insurance Reform and Modernization Act of 2006", [http://www.whitehouse.gov/omb/legislative/sap/109-2/hr4973sap-h.pdf], visited on September 22, 2006.

Table 2. Side-by-Side Comparison of Flood Insurance Reform Legislation: H.R. 4973 and S. 3589

Provision	**H.R. 4973 (Baker)** **[as passed by House on 6/27/06]**	**S. 3589 (Shelby)** **[as approved by Senate Banking Committee on 5/25/06]**
Title	Flood Insurance Reform and Modernization Act of 2006	Same.
Purpose	To protect the integrity of the NFIP by fully funding existing legal obligations, increase incentives for program participation, and promote property owner awareness of both flood risks and the quality of information regarding such risks. (Sec. 2)	No comparable prevision.
Reform of Premium Rate Structure	Would require phase-in of actuarial rates for nonresidential (commercial) properties and non-primary residences by increasing the chargeable premium rates 15% once during the 12-month period after the Director of Federal Emergency Management Agency (FEMA) submits a report to Congress certifying that it has completed its review of the nation's flood maps, and once every 12 months thereafter until such increase is accomplished. (Sec. 4)	Would gradually phase out the current premium rate subsidies on certain pre-Flood Insurance Rate map (pre-FIRM) properties: (1) non-primary (vacation and second homes) residences; (2) any business property; (3) any severe repetitive loss property; (4) any property that has incurred flood-related damage in cumulative amounts of payment exceeding the fair market value (FMV) of such property; (5) any business property; and (6) any property that has sustained substantial damage exceeding 50% of the FMV or substantial improvement exceeding 30% of its FMV. Would provide for a 25% increase in premium rates per year during the phase-out period until the property is no longer subsidized under the program. Would prohibit the Director from offering flood insurance at less than actuarial rates for new policies or lapsed policies as a result of the deliberate choice of the policyholder. (Sec. 4(a))

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
Annual Limitations on Premium Increases	Would increase from 10% to 15% the average annual chargeable premium rate increase for each risk category during any 12-month period. (Sec. 9)	Would change the overall maximum annual premium increase from 10% per year to 15% per year. Would require the premium increase from phasing out the subsidized properties to be 25% per year until that property is no longer subsidized under the program. (Sec 4(b))
Waiting Period for Effective Date of Policies	Would reduce the waiting period for effective date of coverage for all purchases or transfers of property by any means, not just by purchase via a loan as under current law, from the 30-day waiting period to a 15-day period. (Sec. 5)	No comparable provision.
Recently Purchased Pre-FIRM Properties	Would require phased-in actuarial rates on newly purchased pre-FIRM properties using the same phase-in structure that nonresidential and non-primary homes would be subject under the legislation. (Sec. 4)	No comparable provision.
Extending Mandatory Purchase Requirement to Properties Located Behind Structural Flood Protection Systems	Would require GAO to study the regulatory, financial, and economic impacts (i.e., costs of home-ownership, actuarial soundness of program, lender compliance), and the effectiveness and feasibility of amending the Flood Disaster Protection Act of 1973 to extend mandatory flood insurance coverage purchase requirements to properties located in areas that would have special flood hazards but for the existence of a structural protection system. (Sec. 3(a)(2))	Would require the Director to issue an amended final regulation defining special flood hazard areas (SFHA) to include areas known as “residual risk” areas located behind manmade structures such as levees and dams. (Sec. 5(a)) Residual risk areas are areas that would otherwise be within the 100-year flood plain but are currently not required to obtain flood insurance because they are protected by manmade structures such as levees and dams. Would require that residual risk areas be subject to the mandatory purchase requirement, but only after the Director completes the mapping of all residual risk areas in the Unites States that he/she deems essential to administer the flood insurance program. (Sec. 5(c)(2))

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
Non-Mandatory Participation in 500-Year Floodplain	No comparable provision.	States that it is not mandatory for individuals who reside in the 500-year floodplain to obtain flood insurance. Requires the Director to notify the communities within the 500-year floodplain to give them notice that their communities are in elevated flood risk areas. Requires federal and state entity for lending regulation to develop regulations, after consultation with the Federal Financial Institutions Examination Council, to notify the purchaser and the servicer of the mortgage loan that such property is located in a 500-year flooplain. Mortgage lenders must also give notice to mortgagees that they reside within a 500-year floodplain. Civil penalties are provided for failure to comply with the notice requirements. (Sec. 19)
Maximum Coverage Limits and New Lines of Coverage	Would increase coverage limits from $250,000 (structure) and $100,000 (contents) to $335,000 and $135,000 for any single-family dwelling and from $500,000 to $670,000 for structures and related contents of a nonresidential property. (Sec. 7) Would provide for payment of $1,000 per dwelling in additional living expenses following a flood loss when the residence is unfit to live in. Would allow homeowners to purchase optional coverage for flood losses in basements, crawl spaces and other enclosed areas under buildings that are not covered by primary flood insurance. Would provide optional business interruption coverage for commercial property. Losses would be determined by the profits the covered business would have earned, and on previous financial records, had the flood not occurred. Would provide optional coverage for the full replacement cost of any contents in the residential and commercial property. New benefits would be made available only at time of renewal or issuance of a new contract, and only at actuarial rates. (Sec. 8)	Would require the Government Accountability Office (GAO) to conduct a study and submit a report to Congress on the number of flood insurance policyholders currently insured and what effect, if any, on raising the maximum coverage limits. (Sec. 24(c)(4))

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
State Chartered Financial Institution	Would require a study of the impact, effectiveness, and basis under the Constitution of the United States for amending the Flood Disaster Protection Act of 1973 to extend NFIP's mandatory purchase requirements to properties in special flood hazard areas (SFHA) with mortgages issued by state-chartered financial institutions. (Sec. 3(a)(3))	Would require that lending institutions chartered by a state and not insured by the Federal Deposit Insurance Corporation (FDIC) be subject to NFIP's mandatory flood insurance purchase requirement no later than December 31, 2008. (Sec. 7)
Financing of Funds from Treasury	No comparable provision.	Would authorize the Secretary of the Treasury to provide funds to pay claims resulting from the 2005 hurricane season. (Sec. 10(a))
Borrowing Authority Debt Forgiveness	No comparable provision.	Would require the Secretary of the Treasury to completely eliminate any obligations owed to the Treasury by the NFIP for the payment of flood insurance claims resulting from the 2005 hurricane season. (Sec. 11(a)) Debt forgiveness would take effect only after the Director certifies to the Treasury that all financial resources available to the Director to operate the NFIP have been otherwise obligated to pay claims. (Sec. 11(b))
Borrowing Authority Limits	Would increase the National Flood Insurance Program (NFIP) Treasury borrowing authority from $20.775 billion to $25 billion. (Sec. 10)	Would reduce the NFIP's borrowing authority from $20.775 billion to $1.5 billion. (Sec. 11(c))
Repayment Plan for Borrowing Authority	Would require the Director of Federal Emergency Management Agency (FEMA) to submit a report to Congress within six months of enactment of the act, setting forth a plan for repaying borrowed funds. (Sec. 10)	Would require that any time the NFIP uses its borrowing authority, it must submit a repayment plan to both the Secretary of the Treasury and to Congress. (Sec. 15)

Provision	**H.R. 4973 (Baker)** **[as passed by House on 6/27/06]**	**S. 3589 (Shelby)** **[as approved by Senate Banking Committee on 5/25/06]**
Reserve Funds	No comparable provision.	Would establish in the Treasury a National Flood Insurance Reserve Fund ("Reserve Fund") capitalized with up to 1% of the total potential loss exposure of all outstanding flood insurance policies in force within the program, or a higher percentage, as the Director determines to be appropriate. Would establish a mechanism in order to achieve the target 1% ratio within 10 years. In FY2007 the reserve ratio would be 10%; in 2008 would be 20%, increasing 10% each year through 2015 when the reserve ratio would be 90% . Director would have discretion to suspend the attainment of the required reserve ratio in any fiscal year and request additional appropriations from Congress if he/she determines an increase in the amount of aggregate annual insurance premiums to be collected for any fiscal year would have serious negative implications for the overall program. (Sec. 14)
Minimum Deductibles for Claims	No comparable provision.	Would set minimum annual deductible for pre-FIRM structures at $2,000 and post-FIRM structures at $1,000. All deductibles are an annual basis, and once the deductible has been met, no further deductible is required for that year. (Sec. 12)
Extension of Pilot Program for Mitigation of Severe Repetitive Loss Properties	Extends the pilot program for mitigation of severe repetitive loss properties through September 30, 2011. (Sec. 13)	No comparable provision.

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
Civil Penalties for Lending Institutions	Civil penalties on lending institutions for violating the mandatory flood insurance purchase requirement would be increased from $350 to $2,000 per violation and the annual cap from $100,000 to $1,000,000. Would add a "safe harbor" provision to protect mortgage lenders for "technical noncompliance" with flood insurance requirements and "unintended clerical errors" by stating that no penalties may be imposed on lenders who make good faith effort to comply with the requirements. The $1 million cap would not apply to regulated institutions during a calendar year if, in any three of the five calendar years immediately proceeding that calendar year, the institution was assessed a penalty of $1 million. (Sec. 6)	Civil penalties on lending institutions for violating the mandatory flood insurance purchase requirement increase from $350 to $2,000 for each violation. Eliminates the annual cap. (Sec. 8)
State Disaster Claims Mediation Programs	Would permit the insurance commissioner of a state to submit a request to the Director of FEMA for the agency to participate (e.g., provide certified adjusters) in non-binding mediation of catastrophe-related insurance claims that may result in flood damage claims under the NFIP. Representatives of the Director who participate in the program would be required to coordinate their activities with state insurance regulators.	Would require the NFIP, upon request of a state insurance commissioner, to participate in a state's non-binding mediation claims program where there are multiple insurance claims on the same subject property. This provision would not apply in the event of a major disaster that results in flood damage claims but no losses covered under a personal lines residential property insurance policy. Would require mediators to have at least two years of practical experience and be in good standing with regulatory officials in the state where the mediation is to occur.
	Would require the following: (1) all statements made and documents produced during the mediation shall be deemed privileged and confidential settlement negotiations made in anticipation of litigation; (2) participation in the mediation shall not affect or expand the liability or rights or obligations of any party in contract; (3) the federal courts to retain the exclusive jurisdiction; and (4) FEMA shall not be required to pay additional mediation fees. (Sec. 11)	Same. (Sec. 22)

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
Notice of Flood Insurance Availability Under RESPA	Would amend Section 5(b) of the Real Estate Settlement Procedures Act of 1974 (RESPA) to create a new notice provision to ensure that individuals who purchase land in areas of elevated flood risk (whether or not the property is located in a special flood hazard area) are made aware of the risk and given an opportunity to purchase flood insurance. (Sec. 14)	Would amend Section 5(b) of the RESPA by requiring the Secretary of Housing and Urban Development to include in the booklet distributed an explanation and availability of flood insurance . (Sec. 20)
Escrow of Flood Insurance Payments	Would amend Section 5(b) of the RESPA to add new statement in RESPA good faith estimate that states the escrow of flood insurance payments is required for many loans under the 1973 act, and may be a convenient and available option with respect to other loans. (Sec. 14)	Would require that each federal entity for lending regulation, after consultation with the Federal Financial Institutions Examination Council, promulgate regulations to direct policyholders to pay flood insurance premiums directly to the mortgage lender for the duration of the loan when they make their monthly mortgage payments. The lender would be required to deposit such premiums and fees in an escrow account on behalf of the borrower. After the mortgage loan has been paid off, the lender would be required to provide notice to the mortgagee that insurance coverage may cease with the final mortgage payment, and provide direction as to how the homeowner may continue flood insurance coverage. This section would apply to mortgages outstanding or entered into on or after the expiration of the two-year period beginning on the date of the enactment of this act. (Sec. 9(a))

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
Technical Mapping Advisory Council	Would reestablish the Technical Mapping Advisory Council to assist with managing flood mapping activities. The council would include representatives from the Army Corps of Engineers, local and regional flood and stormwater agencies, state geographic information coordinators, and flood insurance servicing companies. Members of the council, appointed by the Director of FEMA, would make recommendations to the Director for improvements to the flood map modernization program, maintain an inventory of updated flood hazard maps and information, and submit an annual report to the Director outlining their activities and recommendations. (Sec. 16(c))	Would establish an 11-member Technical Mapping Advisory Council. Members are appointed by the Director and they would represent the following agencies or organizations: Under Secretary of Commerce for Oceans and Atmosphere; surveying and mapping professional associations; professional engineering associations; flood hazard determination firms; United States Geologic Survey; Office of Management and Budget (OMB); state geologic survey programs; state national flood insurance coordination offices; Army Corps of Engineers; Secretary of the Interior; and, the Secretary of Agriculture. The council would make recommendations to the Director on cost-effective way to improve the quality, ease of use, and distribution and dissemination of flood insurance rate maps, develop mapping standards and guidelines for FIRMs, and submit an annual report on the council's activities and recommendations to the Director. Would require the chairperson of the council to consult with the Federal Geographic Data Committee (established pursuant to OMB Circular A-16) to ensure consistency with national digital spatial data collection standards. (Sec. 16)
Post-Disaster Flood Elevation Determinations	Would allow the Director to issue interim flood elevation requirements for any areas affected by flood-related disaster. Interim elevation determinations would take effect immediately upon issuance and may remain in effect until the Director established new flood elevations for such area. (Sec 16(d))	No comparable provision.

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
Notification and Appeal of Map Changes	Would require that when FEMA proposes a change in flood elevation, the Director must notify the chief executive officer of each community affected by the proposed elevation. The Director would also be required to publish a notice in the Federal Register and local newspapers, notifying each owner of real property affected by the proposed elevation the status of such property with respect to flood zone and flood insurance requirements under the act, and the process to appeal a flood elevation determination. (Sec. 17)	No comparable provision.
Reiteration of FEMA Responsibility Under the 2004 Reform Act	Would direct FEMA under the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 ("Reform Act of 2004") to establish an appeals process that policyholders can use to resolve decisions of the Director relating to claims, proofs of loss, and loss estimates. Would require the Director to continue to work with the insurance industry, state insurance regulators, and other interested parties to implement previously developed minimum training and education standards for insurance agents who sell flood insurance policies. Would require the Director to submit a report to Congress within six months describing FEMA's implementation of provisions in the Reform Act of 2004. (Sec. 15)	Would direct FEMA to establish an appeals process through which policyholder may appeal the claims, proofs of loss, and loss estimates relating to NFIP claims decisions. (Sec. 23(a)) Would require the Director to continue to work with the insurance industry, state insurance regulators, and other interested parties to implement previously developed minimum training and education standards for insurance agents who sell flood insurance policies. (Sec. 23(b)) Would require the Director to submit a report to Congress not later than three months after enactment of the act detailing the progress made towards implementing each provision of the Reform Act of 2004 (P.L. 108-264; 118 Stat. 712). (Sec. 23(c)) Would require the Director to submit a report to Congress every 30 days detailing the progress made towards implementing the appeals process of Section 203 of the 2004 Flood Insurance Reform Act until such time as the process is fully updated. (Sec. 23(c))

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
Removal of Limitations on State Contributions for updating flood maps	No comparable provision.	Would remove the prohibition of states contributing more than 50% to map modernization in order for states to effectively and efficiently update and maintain their maps. (Sec. 18)
Testing New Flood Proofing Technologies	No comparable provision.	Would require the NFIP to allow testing of new types of flood proofing technology. States that such structures would not be construed to be in violation of any flood risk mitigation plan developed by that state or community and approved by the Director. (Sec. 21)
National Levee Inventory	Requires the Director, in consultation with the Secretary of the Army, to maintain and publish an inventory of levees in the United States. (Sec. 18)	No comparable provision.

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
National Flood Mapping Program	Would require the Director to establish a program under which he/she shall review, update, and maintain flood insurance rate maps. Each map shall include a depiction of the 500-year floodplain, as well as "residual risk" areas behind levees, dams, and floodwalls. Updated flood maps would also include relevant information on coastal inundation, stream flows, watershed characteristics, and topography provided by the Army Corps of Engineers and the National Oceanic and Atmospheric Administration (NOAA). Would require the Director to: (1) establish standards to ensure the adequacy and consistency of maps and methods of data collection and analysis; (2) give priority to updating maps of coastal areas affected by Hurricanes Katrina and Rita in order to provide guidance with respect to hurricane recovery efforts; and (3) in consultation with the Technical Mapping Advisory Council, submit a report to Congress that describes the flood map modernization activities by June 30 of each year. Would require FEMA, when practical, to utilize emerging weather forecasting technologies in updating its flood maps. Would require FEMA after each update to flood maps, in consultation with the chief executive officer of each community affected, to conduct a program to educate such communities about the updated flood insurance maps. Would authorize the appropriation of $300 million for fiscal years 2007 through 2012. (Sec. 16)	Would require the Director with the guidance of the Technical Mapping Advisory Council to map the 500-year floodplain and areas of residual risk, as well as updating the 100-year floodplain. In updating and maintaining maps, the Director would be required to establish standards to ensure that maps are adequate for flood risk determinations and used by state and local governments. Would direct the NFIP to use the latest technology on hydrologic and hydraulic modeling, and the most accurate flood elevation data in creating and updating the flood maps. (Sec. 17) Would authorize the appropriation of $400 million for FY2007 through FY2012. (Sec. 17)

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
Annual Report on Financial Condition of the Program	Would require FEMA to submit semiannual reports to Congress on the financial status of the program, including financial status of the National Flood Insurance Fund (NFIF) and current and projected levels of claims, premium receipts, expenses, and borrowing under the program. (Sec. 12)	Would require the Director to submit annual reports to Congress on the operations, activities, budgets, receipts, and expenditures of the NFIP for the preceding 12-month period. Each report would be submitted not later than three months following the end of each fiscal year. (Sec. 24(d))
Premium Adjustment	No comparable provision.	Would require that after updating any flood insurance map the homeowners located on that map could request a premium rate adjustment to accurately reflect the current risk of flood to such property. (Sec. 6)
GAO Study of Pre-FIRM Properties	Would require the Government Accountability Office (GAO) to conduct a study and submit a report to Congress on coverage for pre-FIRM properties, as well as the effects of extending the mandatory purchase requirement to properties protected by dams and levees. (Sec. 3)	Would require the Secretary of the Treasury to conduct a study and submit a report to Congress on the remaining pre-FIRM structures that are explicitly receiving discounted premium rates. The study would include the historical basis for the receipts of such subsidy and whether such subsidy has outlasted its purpose. (Sec. 24(f))
Investigation of Write-Your-Own Insurer's Adjustment of Claims Relating to Hurricane Katrina	Would require the Inspector General of the Department of Homeland Security to investigate Katrina-related claims adjusted by Write-Your-Own insurers to determine whether, and to what extent, the companies improperly assigned damages to flooding covered by NFIP that should have been paid by the windstorm coverage provided by the insurance companies. Would require the Inspector General to report the finding to Congress not later than six months after enactment of the act. (Sec. 21)	No comparable provision.

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
GAO Study on Write Your Own (WYO) Policies	No comparable provision.	Would require GAO to conduct a study and submit report to Congress on the Write-Your-Own program that includes consideration of: (1) the fees and expenses paid from premium income earned under the NFIP to cover the cost of selling, servicing, and precessing of claims; and (2) the feasibility of using a competitive bidding process, or other alternative, to select one or more private insurer to sell and service NFIP policies and process claims in exchange for a fee agreed upon by contract with the Director. (Sec. 24(a))
GAO Audit of NFIP Relating to Hurricane Katrina	No comparable provision.	Would require GAO to audit the financial transactions of the NFIP relating to the $23 billion spent on claims during the 2005 hurricane season. (Sec. 24(b))
GAO Report on Expanding NFIP	No comparable provision.	Would require GAO to conduct a study and submit a report to Congress on the effects that expanding flood insurance beyond the current caps (coverage limits) might have on the private insurance market. (Sec. 24(c))
GAO Evaluation of the NFIP	No comparable provision.	Would require GAO to submit a report to Congress that analyzes whether the NFIP has fulfilled its purpose, unduly burdened or benefitted taxpayers, and makes recommendations for legislative or administrative action to ensure it operates in a more effective and efficient manner. (Sec. 24(e))
GAO Study on Direct Purchase in Non-Participating Communities	No comparable provision.	Would require GAO to study the effects of allowing individuals from non-participating communities to purchase flood insurance through the NFIP's direct program. (Sec. 24(g))

Provision	H.R. 4973 (Baker) [as passed by House on 6/27/06]	S. 3589 (Shelby) [as approved by Senate Banking Committee on 5/25/06]
GAO Study of Participation of Low-Income Property Owners in High-Risk Areas	Would direct GAO to conduct a study of potential methods, practices and incentives that would increase the degree to which low-income property owners living in high-risk areas participate in the NFIP. The study would analyze the feasibility of providing coverage to low-income families at discounted rates, the amounts of the discount to make it affordable, and the extent to which low-income families would be affected by expanding the mandatory purchase requirements. The report would be submitted not later than 12 months after the date of enactment of this act. (Sec. 16(e))	No comparable provision.
Clarification of Replacement Cost Provision, Forms, and Policy Language	Would require FEMA to issue regulations and revise materials that are provided to policyholders using "plain language" and easy to understand terms and concepts. Would require the Director to: (1) issue regulations to clarify the applicability of replacement cost coverage under the NFIP; (2) revise any regulations, forms, notices, guidance, and publications to more clearly describe the meaning of full cost of repair or replacement under the replacement cost coverage; and (3) revise the language in flood insurance policies regarding rating and coverage, such as classification of buildings, basements, crawl spaces, detached garages, enclosures below elevated buildings, and replacement cost, to make it consistent with language used widely in homeowners policies. (Sec. 19)	No comparable provision.
Authorization for Staff Funding	Would authorize to be appropriated such sums of money as may be necessary to hire additional staff to carry out the responsibilities of the Director pursuant to this act. (Sec. 20)	No comparable provision.

Source: Congressional Research Service.