

Comparison to UP reauthorization principles:

Increase the size of the professional staff employed by the NFIP to allow better oversight and standardization of the claim adjusting practices of Write-Your-Own companies.

The Draft calls for an increase in the size of the Federal Insurance Office staff.¹

Implement audit penalties for claim underpayments and overpayments.

The Draft would allow the FEMA Administrator to assess such penalties but does not create a new private right of action.²

Disqualify from NFIP vendor contract eligibility all engineering, construction, claim adjusting and consulting professionals and firms whose work product related to flood losses has been found to be biased, unethical, incomplete or otherwise inconsistent with relevant professional standards

The Draft includes such a provision.³

Reform the appeals process set forth 44 CFR. § 62.20. The process needs clear procedural and substantive rules to merit restored public confidence. The appeals process, appellants' rights and the review standards must be transparent and allow efficient and neutral reviews of claim and coverage decisions. Congress should appropriate adequate funding for NFIP staff to be able to annually track appeals and report outcomes

The Draft does not include any significant change from existing law.⁴

¹ STAFF.—The Administrator shall ensure that the Flood Insurance Advocate has sufficient staff to carry out all of the duties and responsibilities of the Advocate under this section, which shall include providing direction as necessary, including by direct conversations with insurance agents

² UNDERPAYMENT OF CLAIMS BY WYO COMPANIES.—The Administrator shall establish penalties for companies participating in the Write Your Own program knowingly underpaying claims for losses covered by flood insurance made available under this title, which penalties shall be commensurate, with respect to the amount of the penalty, to the penalties applicable to overpayment of such claims by a similar amount by such companies.

³ The Administrator shall prohibit, in the preparation, production, or submission of any report in connection with the proving or adjusting of a claim for flood insurance coverage made available under this title, including any engineering report or claims adjustment report, any person to knowingly engage in the practice of engineering without a license, to knowingly forge any such report, or to knowingly make any materially false, fictitious, or fraudulent statement or representation in such a report. Whoever violates subsection (a) shall be subject to such penalties as the Administrator and the DHS Security shall, by regulation, establish, which may include suspension and debarment from participation in the NFIP

⁴ The Administrator shall establish an appeals process to enable holders of a flood insurance policy provided under this title to appeal the decisions 12 of their insurer, with respect to the disallowance, in whole or in part, of any claims for proved and approved losses covered by flood insurance. Such appeals shall be limited to the claim or portion of the claim disallowed by the insurer. (b) APPEAL DECISION.—

Vendor, WYO, Independent Adjusting, administrative support and other consulting contracts with the NFIP shall be public documents.

The Draft does not include such a statement.

The NFIP should be reauthorized for a minimum of 10 years and the debt should be forgiven.

The Draft alludes to a 5 year reauthorization⁵ and does not endorse debt forgiveness.

Remove the ICC eligibility requirement of 50% or more so code compliance is covered, regardless of loss severity. Time and money is routinely wasted on disagreements over whether that threshold has been met.

The Draft includes an option to buy \$60,000 in coverage⁶ but still appears to require a substantial damage determination.

Require an advance of at least 10% of available coverage within 30 days of the date of loss

The Draft does not include such a statement.

The current Standard Flood Insurance Policy only gives claimants 60 days to submit a complete, signed, sworn proof of loss document. This is too short a window and should be 90 days. The Federal Insurance Administrator has authority under 44 CFR § 61.13(d) to waive or grant extensions of this deadline. When he/she exercises discretion to extend the deadline beyond 90 days, notice of the extension shall be disseminated at least one week in advance of the original deadline. The proof of loss requirement shall be a notice requirement only. Policyholders shall have a minimum of 180 days from the date the proof of loss is due to submit the documentation substantiating their claim.

The Draft does not include such a statement.

Clarify that foundation damage is covered if it was proximately caused or exacerbated by the flood.

The Draft authorizes a GAO study on cost of providing such coverage.⁷

Upon a decision in an appeal under subsection (a), the Administrator shall provide the policyholder with a written appeal decision. The appeal decision shall explain the Administrator's determination to uphold or overturn the decision of the flood insurer. The Administrator may direct the flood insurer to take action necessary to resolve the appeal, to include re-inspection, re-adjustment, or payment, as appropriate.

See existing law at: <https://www.law.cornell.edu/cfr/text/44/62.20>.

⁵ "Upon the expiration of the 5-year period beginning upon the enactment of the National Flood Insurance Program Policyholder Protection and Information Act of 2017"

⁶ "(A) PRIMARY COVERAGE.—Each policy for flood insurance coverage made available under this title shall provide coverage under this subsection having an aggregate liability for any single property of \$30,000. "(B) ENHANCED COVERAGE.—The Administrator shall make additional coverage available under this subsection, in excess of the limit specified in subparagraph (A), having an aggregate liability for any single property of up to \$60,000."

Congress should import at least two portions of California Insurance Code section 2071:

• “Adjusters”

If within a 6-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report.

The Draft does not include such a statement.

• “Requirements in case loss occurs” that allows a claimant to access:

...all documents that relate to the evaluation of damages, including, but not limited to, repair and replacement estimates and bids, appraisals, scopes of loss, drawings, plans, reports, third-party findings on the amount of loss, covered damages, and cost of repairs, and all other valuation, measurement, and loss adjustment calculations of the amount of loss, covered damage, and cost of repairs.

The Draft allows a policyholder to obtain unredacted copies of technical reports⁸

Amend the National Flood Insurance Act (“NFIA”) to remove the Federal Emergency Management Agency (“FEMA”) and Write-Your-Own Insurers’ (“WYO”) immunity from liability for fully compensating victims of unfair flood claim practices. Numerous whistleblowers have identified that immunity as the most significant cause of poor flood claim handling. The statute of limitations must be subject to equitable tolling during the adjustment of the claim and should be for a minimum of two years from the date of the denial or partial denial, not the date of the loss. Currently, in disaster areas, if the proof of loss is extended, the statute of limitations is not tolled.

The Draft only addresses litigation oversight and cost control.⁹

⁷ The [GAO] shall conduct a study of the treatment, under flood insurance coverage made available under the National Flood Insurance Act, of earth movement and subsidence, including earth movement and subsidence caused by flooding, which shall include— (1) identification and analysis of the effects of such treatment on the National Flood Insurance Program and insureds under the program; (2) an assessment of the availability and affordability of coverage in the private insurance market for earth movement and subsidence caused by flooding; and (3) an assessment of the effects on the National Flood Insurance Program of covering earth movement and subsidence caused by flooding.

⁸ [U]pon request by a policyholder, the Administrator shall provide a true, complete, and unredacted copy of any technical assistance report that the Administrator relied upon in adjusting and paying for any damage to or loss of property insured by the policyholder and covered by flood insurance made available under this title. Such disclosures shall be in addition to any other right of disclosure otherwise made available pursuant such section 552a or any other provision of law
552a: <https://www.law.cornell.edu/uscode/text/5/552a>

⁹ OVERSIGHT.—The Administrator shall monitor 3 and oversee litigation conducted by Write Your Own companies arising under contracts for flood insurance sold pursuant to this title, to ensure that (1) litigation expenses are reasonable, appropriate, and cost-effective; and (2) Write Your Own companies comply with guidance and procedures established by the Administrator regarding the conduct of litigation.“(b) DENIAL OF REIMBURSEMENT FOR EXPENSES.—The Administrator may deny reimbursement for litigation expenses that are determined to be unreasonable, excessive, contrary to guidance issued by the Administrator, or outside the scope of any arrangement entered into with a Write Your Own company. “(c) LITIGATION STRATEGY.—The Administrator may direct litigation strategy for claims arising under a

Amend 42 U.S.C. § 4019 or otherwise grant authority to FEMA to adopt the National Association of Insurance Commissioners’ Unfair Claims Settlement Practices Act (timelines for investigating, communicating information, and settling claims). Bulletin W-15025 (June 1, 2015) was a positive first step in recognizing that claims handling varied widely among WYOs, resulting in inconsistent claimant experiences

The Draft includes a 90-day pay or deny requirement and authorizes a related GAO study.¹⁰

We share the goal of increasing resiliency and controlling premium costs through greater participation...

The Draft caps premium increases at 15 percent, with exceptions.¹¹

19 contract for flood insurance sold by a Write Your Own company. (d) SUBSTITUTION.—If at any time, the Administrator determines there is a conflict of interest between 23 the Write Your Own company and the National Flood Insurance Program, or it is in the best interest of the United States, the Administrator may promptly take any necessary action to be substituted for the WYO company in any action arising out of any claim arising under a contract for flood insurance sold by a Write Your Own company.’

¹⁰ The Administrator shall provide that, in the case of any claim for damage to or loss of property under flood insurance coverage made available under this title, a final determination regarding approval of a claim for payment or disapproval of the claim be made, and notification of such determination be provided to the insured making such claim, not later than the expiration of the 90-day period... which such claim was made. Payment of approved claims shall be made as soon as possible after such approval.

The Comptroller General of the United States shall conduct a study of the policies and practices for adjustment of claims for losses under flood insurance coverage made available under the National Flood Insurance Act, which shall include: (1) a comparison such policies and practices with the policies and practices for adjustment of claims for losses under other insurance coverage; (2) an assessment the quality of the adjustments conducted and the effects of such policies and practices on such quality; (3) identification of any incentives under such policies and practices that affect the speed with which such adjustments are conducted; and (4) identification of the affects of such policies and practices on insureds submitting such claims for losses.

¹¹ The chargeable risk premium rate for flood 7 insurance under this title for any property may not “(A) be increased by more than 15 percent each year, except— “(i) as provided in paragraph (4); “(ii) in the case of property identified under section 1307(g); or “(iii) in the case of a property that: “(I) is located in a community that has experienced a rating down grade 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 “(aa) decreased the amount of the deductible; or “(bb) increased the amount of coverage; or “(III) was misrated; or ‘(B) in the case of any residential property having 4 or fewer residences for which a valid National Flood Insurance Program Elevation Certificate has been filed with the National Flood Insurance Program within the proceeding calendar year, exceed \$10,000 in any single year, except that such amount (as it may have been previously adjusted) shall be adjusted for inflation by the Administrator upon the expiration of the 5-year period beginning upon the enactment of the National Flood Insurance Program Policyholder Protection and Information Act of 2017 and upon the expiration of each successive 5-year period thereafter, in accordance with an inflationary index selected by the Administrator;”; and (2) in paragraph (2), by striking “5 percent” and inserting “8 percent.”