

Coalition of New York and New Jersey Flood Insurance Consumer Advocates

Comments on the Flood Insurance Sustainability and Affordability Act of 2017

Title I: Enhancing National Flood Insurance Program Solvency and Sustainability

- *Sec. 4: Reauthorization of the NFIP.*
 - **Support** ten-year reauthorization: longer reauthorizations reduce uncertainty for property owners and their communities.

Title II: Enhancing Flood Insurance Affordability and Accessibility

- *Sec. 201: Increase investment in flood mitigation and affordability.*
 - **Support** requiring FEMA to reallocate existing surcharges established under the Homeowner Flood Insurance Affordability Act towards pre-disaster mitigation and flood mitigation assistance.
 - **Recommend** expanding pre-disaster mitigation and flood mitigation beyond what is available through the Homeowner Flood Insurance Affordability Act surcharge.
- *Sec. 203: Increased Cost of Compliance Coverage.*
 - **Support** expansion of ICC claims payments from \$30,000 to \$75,000,
 - **Support** allowing 50% of the ICC claim payment to exceed the overall policy limit.
 - **Support** expanding ICC to fund eligible activity under the Pre Disaster Hazard Mitigation Program.
 - **Recommend** expanding ICC claims payments to cover the realistic cost of home elevation for homes that have experienced substantial damage due to flooding.
 - **Recommend** expanding eligibility for ICC claims beyond “substantially damaged” and “repetitive loss” properties. Permit all policyholders who have experienced a loss to file an ICC claim to cover the cost of:
 - Mitigation that would raise the building’s lowest floor for rating to or above the effective base flood elevation (e.g. basement or subgrade crawlspace fill in and installation of flood vents, in addition to full building elevation)
 - Raising building machinery above the base flood elevation
 - Repairing flood damage using flood-resistant materials (e.g. replace wood floors with tile, replace drywall with flood-resistant materials)
 - **Explanation:** Flood insurance currently pays only for the cost of rebuilding the damaged portions of the building as they were before the damage. As a result, homeowners often have little choice but to use their NFIP claim payments to rebuild in a manner that is not resilient, such as putting a new boiler or furnace back into the basement. NFIP repair funds would be put to better use if policyholders could access ICC funds for the cost difference between simply

replacing the damaged item and making that item resistant to damage in the next flood.

- *Sec. 204. Provides one-time premium credits of \$500 to offset the cost of obtaining an Elevation Certificate.*
 - **Support** assisting homeowners with the cost of obtaining an Elevation Certificate. This will allow them to know their full-risk rate, so that they can make a price comparison between the Pre-FIRM subsidized and unsubsidized rate, and avoid paying a higher “subsidized” rate if a lower full-risk rate is available. For example, an estimated 70% of New York City homeowners in high-risk flood zones are significantly overpaying for flood insurance, because their full-risk rate would be cheaper than their “subsidized” rate. Knowledge of the full-risk rate is also essential for homeowners to plan for the future.
 - **Recommend** amending the proposal to allow “up to \$800,” to account for vast price differences in different regions for elevation certificates. In some regions, they cost far less than \$500, while they can cost as much as \$1,000 elsewhere
- *Sec. 205. Facilitates Mitigation Credits that Reduce Premium Rates.*
 - **Support** providing meaningful rate reductions for residential property owners who undertake mitigation measures beyond elevation to promote flood resilience and allow homeowners to take advantage of rate reductions that only commercial property owners currently have access to.
 - **Support** providing equal treatment for coops and condominiums.
 - **Recommend**
 - Requiring that homeowners who live outside of the Special Flood Hazard Area who are ineligible for Preferred Risk Policies also have access to the mitigation credits, incentivizing them to take measures to reduce their actual flood risk.
 - Creating meaningful rate reductions for raising building machinery above BFE. This would reduce FEMA’s claims payment for replacement of flooded machinery, but also significantly reduces the burden on FEMA and local governments of temporary housing costs following a disaster, because elevated utilities allow residents to return home faster following a flood.
- *Sec. 206. Using replacement value of the structure when calculating premiums.*
 - **Oppose** the implementation for replacement cost value of an insured structure to set rates.
 - **Explanation:** Under this paradigm, high value homes in the flood zone could see an increase in premiums. The NFIP is designed to manage the floodplain and share the cost of recovery in the participating communities; the NFIP is not and does not need to be replacement cost coverage. The NFIP limits for dwelling

coverage should be sufficient to make the dwelling safe and habitable so the owner can continue their recovery. The private market offers policies to cover repairs over the NFIP limit.. The Federal government offers additional disaster help through both SBA loans and CDBG-DR funds managed by the community. Full replacement cost would be a financial hardship to homeowners, increase foreclosures and reduce the take-up for the NFIP.

- *Sec. 207: Affordability Vouchers.*
 - **Support** providing affordability vouchers where flood insurance premiums and fees would result in housing costs in excess of 40% of household income.
 - **Recommend** that the voucher be available to eligible households that purchase a flood insurance policy for any reason, not just for households renewing an existing policy or who must buy a policy due to a FIRM revision.
 - **Explanation:** Many lower-income households, particularly elderly households and those on fixed incomes, have had to let policies lapse due to unaffordability of the rising premiums. Those households should have the opportunity to rejoin the National Flood Insurance Program using vouchers that make it affordable rather than be permanently excluded because of unaffordability.
- *Sec. 208: Increasing Coverage Limits.*
 - **Support** increasing coverage from \$500,000 to \$1,000,000 for multifamily and business structures
 - **Oppose** increasing coverage from \$250,000 to \$500,000 for 1-4 family residential structures.
 - **Explanation:** Increasing coverage limits for 1-4 family residential structures would significantly increase the cost of flood insurance for many New York City homeowners with mortgages, and could also increase the cost of rental units in 2-4 family buildings. For many homeowners in New York City and other higher-cost housing markets, mortgage principal balances are quite high, even for lower- and middle-income homeowners. Increasing the maximum coverage amount would dramatically increase premiums for many homeowners who do not have the option to choose their level of coverage, due to the mortgage-based mandatory purchase requirement. The increased coverage limit would have little benefit for the overwhelming majority of insured homeowners, since very few claims payments ever reach \$250,000, much less \$500,000, even in New York City's expensive market. Given the already high cost of flood insurance, the very narrow benefit of increasing coverage maximums is outweighed by the very broad harm it would do to housing affordability.

Title III: Reducing Premium Costs Through an Agreed Value Pilot Program

- *Secs. 301-306: Agreed Value Insurance Pilot.*

- **Oppose** the agreed value option for insureds to quantify flood loss in monetary terms.
- **Explanation:** FEMA has used a system of claim valuation based on flood height in the Sandy Claims Review process, similar to that proposed for this Agreed Value Pilot Program. This claim-valuation method has undervalued claims by several orders of magnitude in the majority of cases we have seen, particularly when the flooding caused foundation damage. Ordinary policyholders would have little way to know whether the agreed value policy would leave them severely under-covered in the event of a flood, and therefore this pilot program could be a trap for policy holders.
- **Support** implementing an industry-standard claims valuation process, including paying the undisputed amount of the claim within 30 days.

Title IV: Providing Private Market Access, Accountability and Competition

- *Sec. 401(a)(1): Requires 1-4 family homeowners with mortgages to purchase flood insurance equal to the lesser of the policy maximum or 80% of the purchase price of the property, rather than the unpaid principal balance as current law provides. Applies to NFIP policies and private flood insurance policies.*
 - **Oppose** increasing the mandatory minimum coverage requirement for 1-4 family homes with federally insured mortgages, whether for NFIP insurance or private flood insurance.
 - **Explanation:** The purchase price is an arbitrary measure of appropriate flood insurance coverage and will significantly increase flood insurance premium costs for many homeowners with mortgages. The purchase price of the property includes the land value, which often exceeds the value of the insured structure in high land value urban markets. In addition, because it includes land value, the purchase price bears no relationship to the replacement cost of the structure in all markets, leading to costly and pointless over-insurance. Tying mandatory insurance coverage to purchase price also penalizes newer homeowners, who generally pay higher prices for homes than owners who purchased in years past.
 - **Recommend** preserving the minimum insurance level for those with federally insured mortgages at the lesser of the unpaid principal balance or the NFIP coverage maximum, and amending the statute to add the the replacement cost of the structure. The amendment would ensure that homeowners are not forced to over-insure structures when the replacement cost of the structure is less than the unpaid mortgage principal balance and the coverage maximum.
- *Sec. 401(a)(2): Preserves “Grandfathering” through Continuous Coverage.*

- **Support** allowing NFIP policyholders to purchase a private flood insurance policy and switch back to NFIP coverage without losing continuous coverage or grandfathering status.
- *Sec. 404: Preserves Funding of NFIP Flood Mapping and Mitigation Activities.*
 - **Support** requiring certain NFIP fees and surcharges to carry over to private flood insurance policies to fund public activities that holistically benefit the flood insurance market.

Title V: Modernizing Flood Mapping and Flood Risk Accuracy

- *Sec. 501: Reauthorizes the National Flood Mapping Program.*
 - **Support** reauthorization at a funding level of \$500 million annually.
- *Sec. 503. High-Resolution Mapping Technology.*
 - **Support** instructing FEMA to facilitate, partner, and leverage current high resolution topographic data in the development of flood insurance rate maps.
 - **Support** NFIP policy rating methodology change to structure-specific flood-risk rating.

Title VI: Enhancing National Flood Insurance Program Transparency and Accountability

- *Sec. 601. Institutes Deadlines for NFIP Claims Determinations.*
 - **Support** requiring NFIP administrators to make determinations on flood claims within 30 days of the initial filing, followed by any payment owed under the claim.
- *Sec 602(a). Final Engineering Report.*
 - **Support** requiring engineering reports for any claim for losses covered by the NFIP to be given to the insured at the same time or before it is given to the insurer, prohibiting any alterations other than by the engineer responsible for the engineering report, and requiring that all claims documents be given to the claimant on the claimant's request..
 - **Recommend** prohibiting the engineer and engineering firm responsible for the report from discussing the contents, findings and conclusions of the report with the insurer or anyone else before it is transmitted to the insured, and adding a deadline of 10 days from the date of the claimant's request for the entity servicing the claim to give all claim-related documents to the claimant.
- *Sec. 602(b). Judicial Review.*
 - **Recommend** extending the Statute of Limitation for instituting a court action on a claim to three years after the date the loss occurred, or 180 days after the final determination on an appeal to the Administrator, whichever is later, and permitting the Administrator to extend the deadline in severe flooding events

- **Support** ensuring that a policyholder is not barred from pursuing a private right of action against a private entity for fraud arising from the handling or disposition of an NFIP claim.
- **Recommend** including bad faith in addition to fraud.
- **Recommend** that any appeal of a claim denial in whole or in part to the Administrator be decided by an independent Third Party Neutral, not an employee of FEMA or NFIP
- *Sec. 602(d): Accountability of NFIP Contractors.*
 - **Support** requiring FEMA to conduct yearly reviews of all private entities that are participating in the National Flood Insurance Program that provide services related to policies or claims, including adjusting, engineering and legal services, to ensure that contractors are complying with all policies and procedures to protect policyholders and prevent fraud.
- *Sec. 602(e): Publication of Claims Data.*
 - **Support** directing FEMA to create and maintain a publically searchable database with top-line data, broken down by state, on the number of NFIP claims filed, the number of claims paid in part, the number of claims denied and the reason for each denial, along with the number of claims appealed; in order to provide additional transparency to the claims and appeals process.
 - **Recommend** that the data on claims paid and denied include the amounts paid or denied on those claims.
 - **Explanation:** Having data on the amounts paid and denied on claims is important to evaluate the fairness of the NFIP claims process. Most claims following a flood are small claims, and those claims tend to be paid quickly without dispute. Claims over \$10,000-\$20,000, however, tend to fare worse. To adequately evaluate FEMA claims payments, analysts need the ability to disaggregate the claims for relatively low levels of damage from the larger claims.
- *Sec. 602(g). Earth Movement.*
 - **Support** prohibition of denial of claims using the “earth movement” exclusion.
- *Sec. 602(h). Simplifies the NFIP Claims Appeals Process.*
 - **Support** requiring the claim appeals process to have clear rules, forms, and deadlines to that are communicated to claimants at the time a claim is initially denied in full or in part.
 - **Recommend:** Requiring that NFIP provide plain-language statements of coverage and rights that an insurance company must use in any denial letter to trigger the statute of limitations.
- *Sec. 603. Banning bad actors from NFIP participation.*

- **Support** identifying individuals and private entities that defrauded policyholders following Superstorm Sandy and barring those individuals and entities from any further involvement in NFIP or FEMA programs.

Additional Recommendations:

- **Replace the Proof of Loss forms:** Instead implement a ‘proof of damages’ requirement more akin to other casualty policies (homeowners and automobile insurance), to make the claims filing process and appeal process fair for homeowners.
- **Forgive NFIP Debt:** Allow the program to move forward on its path to solvency and affordability by forgiving the \$23 billion debt.
- **Develop a more accurate method of rating flood risk:** In addition to considering elevation and current basic structure types when assessing potential flooding damage, add other factors, including structure material (e.g. brick/wood) and urban structure types (e.g. semi-attached/attached) which diminish flood damage, as well as distance from surge impact.
- **Provide greater information to homeowners about expected policy increases over time:** This would include an estimate of the homeowner’s full-risk rate, so that a homeowner can make a price comparison between the subsidized and unsubsidized rate, and avoid paying a higher subsidized rate if a lower full-risk rate is available. Knowledge of the full-risk rate is also essential for homeowners to plan for the future.
- **Attorney Fees:** Make attorney fees payable when property owners successfully appeal improper payments, whether through an administrative appeal or a lawsuit.
- **Remove structural incentive to underpay claims:** include penalties for WYO companies that underpay their claims, similar to overpayment penalties.
- **Reduce the \$250 HFIAA surcharge:** Reduce the surcharge to \$25 for 2-4 unit owner-occupied homes where all units are primary residences for owners and tenants.

Submitted by the following organizations:

Brooklyn Long Term Recovery Group
Center for NYC Neighborhoods
Neighborhood Housing Services of Brooklyn CDC, Inc.
New York Legal Assistance Group
United Policyholders