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## Legislative Bulletin……………………………………….………September 27, 2007

**Contents:**



## Summary of the Bill Under Consideration Today:

**Total Number of New Government Programs**: 1

**Total Cost of Discretionary Authorizations**: $2.4 billion over five years

**Effect on Revenue**: $5 million increase over five years

**Total Change in Mandatory Spending**: $725 million over five years **PAYGO VIOLATION**

**Total New State & Local Government Mandates**: 0

**Total New Private Sector Mandates**: 1

**Number of *Bills* Without Committee Reports:** 0

**Number of *Reported* Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

## H.R. 3121—Flood Insurance Reform and Modernization Act
## (*Rep. Waters, D-CA*)

**Order of Business**: The bill is scheduled to be considered on Thursday, September 27th, likely subject to a structured rule. Amendments made in order under the rule will be summarized in a separate RSC document.

**Background**: The National Flood Insurance Program (NFIP) was created by Congress in 1968 to provide insurance as an alternative to direct federal disaster assistance for individuals living in flood-prone areas. According to the Financial Services Committee, the NFIP is the largest single-line property insurer in the nation, providing flood insurance coverage for 5.4 million consumers. NFIP coverage only applies in cases of mass weather-induced flooding, not in individual instances of, for example, a pipe bursting in one home.

For more information on the NFIP, visit this website: http://www.floodsmart.gov/floodsmart/pages/index.jsp.

**Summary**: H.R. 3121 would adjust and expand the National Flood Insurance Program (NFIP). Highlights of the bill are as follows:

- Expresses a variety of findings, including:
  - "flooding has been shown to occur in all 50 States, the District of Columbia, and in all territories and possessions of the United States; and
  - "the national flood insurance program (NFIP) is the only affordable and reliable source of insurance to protect against flood losses."

- Requires the Government Accountability Office (GAO) to report to Congress on the effects of extending the mandatory flood insurance purchase requirement to <u>all</u> properties located in a flood hazard area, regardless of whether the mortgage on the property is insured by the federal government; and requires GAO to report on flood coverage for pre-FIRM properties, as well as on the effects of extending the mandatory purchase requirement to properties protected by dams and levees.

  <u>NOTE:</u> The term "pre-FIRM" means a structure that was not constructed or substantially improved after the later of December 31, 1974 or the effective date of the initial Flood Insurance Rate Map (FIRM) published under section 1360(a)(2) of the National Flood Insurance Act of 1968 for the area in which such structure is located. In 1974, the first FIRM was issued, to set different rates based on location (and propensity of flooding). Many of the "pre-FIRM" properties suffer from periodic repeat flooding losses. According to the Federal Emergency Management Agency (FEMA), close to 90% of Severe Repetitive Loss Properties (SRLPs) currently enjoy subsidized flood insurance rates from the NFIP.

- Requires the phase-in of "actuarial" rates for NFIP coverage (i.e. rates more reflective of the real value of a property and the risk of a flood) for pre-FIRM nonresidential properties and non-primary residences, beginning on January 1, 2011. This phase-in would not apply to multifamily rental properties with four or more dwelling units or rentals that are the primary residence of a tenant.

- Waives the normal 30-day waiting period for flood insurance coverage to take effect when a policy is purchased within 30 days of the purchase or transfer of the involved property.

- Increases from $350 to $2,000 the fine levied against federally-regulated lending institutions for each failure to enforce mandatory flood insurance purchase requirements.

- Increases the annual cap on fines for institutions from $100,000 to $1 million, but waives this cap for institutions that were assessed a penalty of $1 million in any three of the last five years and for institutions that make a good faith effort to comply with mandatory flood insurance purchase requirements (or for violations that are not material in nature).

- **Expands the NFIP, beginning June 30, 2008, to make federally-backed wind-damage insurance coverage available to NFIP participants.** Participants would have the option of purchasing combined flood-or-wind coverage ('multiperil" coverage) or remain with just flood insurance. Premiums for multiperil coverage would have to be charged at actuarial rates and be based on risk, so that the program would collect enough premiums to pay reasonably anticipated wind-damage claims. Duplicative coverage (having flood insurance AND multiperil insurance) would not be allowed.

  NOTE: The wind coverage would be triggered by damage resulting from "any hurricane, tornado, cyclone, typhoon, or other wind event."

- Provides that multiperil claims not be subject to differentiating between flood damage and wind damage.

- Makes multiperil coverage available only where local governments agree to adopt land use and control measures designed to minimize wind damage, in addition to the existing flood program requirements for flood plain management.

- Sets multiple peril residential policy limits at $500,000 for single-family dwellings, $500,000 for each separate dwelling unit in a multi-unit structure, and $150,000 per dwelling unit for contents and living expense increases from loss of residence.

- Sets multiple peril nonresidential policy limits at $1,000,000 for any single structure and $750,000 for contents and business interruption (based on previous financial records and expectations of profits).

- Prohibits the NFIP from offering new multiperil policies or renew existing multiperil policies during any period in which the NFIP borrows money to pay multiperil policy claims.

- Increases the maximum coverage limits for flood insurance policies, as follows:
  - From $250,000 to $335,000 for residences;
  - From $100,000 to $135,000 for residential contents; and
  - From $500,000 to $670,000 for nonresidential properties.

- Requires each renewal or new contract for flood insurance to include coverage for at least $1,000 for living expenses following a flood event (with the option to purchase more coverage).

- Requires residential NFIP participants to be given the option to purchase actuarially-priced coverage (i.e. coverage with risk-based premiums) for flood losses in basements, crawl spaces, and other enclosed areas under buildings that are not covered by primary flood insurance.

- Requires commercial NFIP participants to be given the option to purchases actuarially-priced business interruption coverage for flood losses (including losses at multifamily rental properties).

- Requires residential and commercial NFIP participants to be given the option to purchase full-replacement-cost contents coverage.

- Increases the annual limitation on NFIP premium increases from 10% to 15%.

- Increases the NFIP's borrowing authority from the U.S. Treasury from $20.78 billion to $21.50 billion.

- Requires that the Federal Emergency Management Agency (FEMA, the agency that implements the NFIP) report to Congress, within six months after enactment of this legislation, on how it intends to repay, within ten years, all funds borrowed, including amounts previously borrowed but not repaid.

  **NOTE: The NFIP currently owes about $18 billion to the U.S. Treasury**, mainly because of the 2005 hurricane season. The Financial Services Committee asserts that the NFIP has expressed doubts about its ability to repay such loans.

- Requires FEMA, upon request of a state insurance commissioner, to participate without fees in a state disaster claims mediation program for the non-binding mediation of flood insurance claims. Participation in the mediation program (the allowable extent of which is detailed in the legislation) would not affect the contract or tort liability of any involved party, or the exclusive jurisdiction of the federal courts to hear disputes involving the NFIP.

- Requires FEMA to report annually to Congress on the financial status of the NFIP.

- **Creates a new $250 million competitive grant program** (over five years) for local communities that encourage homeowners to purchase flood insurance, where those homeowners are not legally required to do so, and in general, educate all residents about the benefits of flood insurance and flood risk mitigation. The federal share of activities under this program could not exceed 75%.

- Requires FEMA to report to Congress, within 60 days of this bill's enactment, a description of its marketing and outreach efforts to educate consumers on the benefits of obtaining flood insurance.

- Extends by three years (through the end of FY2012) the pilot program, which was originally created in 2004, to mitigate severe repetitive loss properties.

- Adds demolition and rebuilding as an allowable activity under the Flood Mitigation Assistance (FMA) program. Also, the per-state and per-community caps on FMA would be lifted to allow FEMA some flexibility in distributing FMA funds, and FEMA would be prohibited from increasing flood insurance policy premiums to cover FMA.

- Directs GAO to report to Congress within one year on suggested methods to increase participation of low-income families in the NFIP.

- Instructs mortgage lenders who make federally related mortgages, as part of their required good-faith estimates of the amount or range of charges the borrower is likely to incur for specific settlement services, to include in each such estimate a conspicuous statement that:
    --says that flood insurance coverage for residential real estate is generally available under the NFIP (whether or not the real estate is located in a flood-prone area);
    --provides an NFIP telephone number and website address; and
    --notes that the escrowing of flood insurance premiums is required for many loans under section 102(d) of the Flood Disaster Protection Act of 1973.

- Reiterates the current-law requirement that FEMA, within 90 days of enactment, establish an appeals process for flood insurance claims.

- Provides $2.4 billion over six years for the continuation of federal mapping of floodplains, as detailed in the bill, in conjunction with the newly reestablished Technical Mapping Advisory Council. Map updates would have to give priority to the areas affected by Hurricanes Katrina and Rita.

- Requires FEMA to provide floodplain map change information (including flood elevation changes) to affected communities, and requires a notice in local newspapers of map changes, a description of the appeals process, and contact information for an appeal.

- Requires the revising of certain documents and forms to include easy-to-understand language.

- Authorizes "such sums as may be necessary" to employ additional staff necessary to carry out all of the responsibilities required by this bill.

- Extends from 60 days to 180 days the deadline for filing the proof of loss associated with a flood insurance claim.

- Extends the sunset date of the NFIP from September 30, 2008 to September 30, 2013.

**RSC Bonus Facts**: FEMA states that the NFIP incurred liabilities estimated to total at least $23 billion as a result of the 2005 Gulf Coast hurricanes, exceeding the $2.2 billion in premiums earned annually and its then-$1.5 billion borrowing authority from the Treasury (which Congress increased twice to account for fast- rising claims). The $23 billion in Hurricane Katrina/Rita claims is about one-and-a-half times the $15 billion the NFIP paid out in claims between its creation in 1968 through 2004. Since 1981, the NFIP has had to borrow money from the Treasury 14 times to keep running, including borrowing more than $100 million 10 times to keep running. *(Source: CRS)*

**Committee Action**: On July 19, 2007, the bill was referred to the Financial Services Committee, which, one week later, marked up the bill and ordered it reported to the full House by a vote of 38-29.

**Possible Conservative Concerns**: Some conservatives have expressed concerns about this bill's expansion of the NFIP in to wind-damage coverage. Since the NFIP is already about $18 billion in debt—debt that may not even be repaid—these conservatives have asserted that now is not the time to expand NFIP's (and thus the taxpayer's) liabilities. Additionally, wind-damage is already covered under many homeowner's insurance policies in the private market, thus this addition of wind-damage coverage to the NFIP would circumvent the successes of the private market. Any such displacement of the private sector would ultimately lead to fewer choices for consumers at higher prices.

Some conservatives continue to be concerned that the NFIP, whether expanded or not, dampens the financial and common-sense disincentives to build homes in flood-prone areas by making flood insurance artificially more available than it otherwise would be. While this legislation does include an important provision to address this situation (requiring actuarial rates for pre-FIRM properties), it delays the implementation of this fix until 2011 and simultaneously grows the NFIP by adding the option of wind-damage coverage.

Furthermore, some conservatives have expressed concerns about the addition of optional coverage for basements and crawl spaces, for much the same reasons as above—unwise expansion of a financially strapped program and dampening of disincentives to build in floodplains.

**Administration Position**: The Administration is expected to express concerns about H.R. 3121 in its Statement of Administration Policy (SAP) to be released this afternoon.

**Cost to Taxpayers**: CBO finds that H.R. 3121 would increase mandatory spending (i.e. increased borrowing authority for the NFIP) by $725 million in FY2009. Furthermore, the bill would increase revenues by $1 million each year, beginning in FY2008. Lastly, the bill would increase authorizations by $451 million in FY2008 and by a total of $2.371 billion over the FY2008-FY2012 period.

**NOTE:** Unless fixed in the rule for H.R. 3121, **this legislation would violate PAYGO**, since it yields a net increase in mandatory spending.

**Does the Bill Expand the Size and Scope of the Federal Government?**: Yes, the bill would create one new program and expand the government's financial exposure under the NFIP.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?**: Yes, the good-faith-estimate provision described above would be a private-sector mandate, as confirmed by CBO.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?**: The Financial Services Committee, in House Report 110-340, asserts that, "H.R. 3121 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI."

**Constitutional Authority**: The Financial Services Committee, in House Report 110-340, cites constitutional authority in Article I, Section 8, Clause 1 (relating to the congressional power to promote the general welfare of the United States) and Clause 3 (relating to the congressional power to regulate interstate commerce).

**Outside Organizations**: Organizations that have expressed concerns with, or are publicly opposing, this legislation (primarily because of the addition of optional wind-damage coverage) include:

- American Insurance Association
- Association of State Floodplain Managers
- Citizens Against Government Waste
- Club for Growth
- Consumer Federation of America
- Financial Services Roundtable
- National Association of Insurance Commissioners
- National Association of Mutual Insurance Companies
- National Association of Professional Insurance Agents
- National Flood Determination Association
- Property Casualty Insurers Association of America
- Reinsurance Association of America

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