

## Calendar No. 250

112TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
112-98

---

---

### FLOOD INSURANCE REFORM AND MODERNIZATION ACT OF 2011

---

DECEMBER 5, 2011.—Ordered to be printed

---

Mr. JOHNSON of South Dakota, from the Committee on Banking,  
Housing, and Urban Affairs, submitted the following

### R E P O R T

[To accompany S. 1940]

The Committee on Banking, Housing, and Urban Affairs, having had under consideration an original bill (S. 1940) to amend the National Flood Insurance Act of 1968, to restore the financial solvency of the flood insurance fund, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

#### INTRODUCTION

On September 8, 2011, the Senate Committee on Banking, Housing, and Urban Affairs considered a Committee Print, entitled “The Flood Insurance Reform and Modernization Act of 2011,” a bill to modernize and bring financial solvency to the National Flood Insurance Program, and for other purposes. The Committee voted unanimously to report the bill to the Senate.

#### BACKGROUND

Congress established the National Flood Insurance Program (NFIP) in 1968 after finding that floods have “created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation’s resources.” (P.L. 90-448) After flooding events, including flooding in the 1950s, federal disaster assistance was paid out to communities and individuals. In establishing the flood insurance program, Congress wanted to create “a reasonable method of sharing the risk of flood losses through a program of flood insurance which can complement and encourage preventive and protective

measures.” (P.L. 90–448) The NFIP includes three essential components to reduce the impact of flooding on lives and property: prevention, mitigation, and insurance.

Today, over 40 years later, more than 21,000 communities in all 50 States, the District of Columbia, and the U.S. territories, now participate in the NFIP. Communities that choose to participate in the NFIP undertake mitigation efforts, regulate land use, and implement responsible building codes for new development to reduce the threat to lives and property. Buildings in Special Flood Hazard Areas, frequently referred to as the 100-year floodplain, are required to meet these building code requirements and, if mortgaged with a federally-regulated lender, are required to purchase flood insurance. Flood insurance is also available in areas outside of the Special Flood Hazard Area in participating communities, though federal law does not require that it be purchased. The Federal Emergency Management Agency (FEMA), which administers the NFIP, provides flood hazard data, maps, and tools that are used by communities in carrying out their responsibilities. These maps are also used by lenders and insurance companies for compliance and insurance purposes.

Nearly thirty years ago, in an effort to meet Congressional intent that the program be “carried out to the maximum extent practicable by the private insurance industry” and through “cooperative efforts” (P.L. 90–448), NFIP formed a public-private partnership with private sector insurance companies, known as Write Your Own (WYO) companies. Under this partnership, WYO companies handle the sale and administration of flood insurance policies while the federal government bears the insurance risk and pays claims from the National Flood Insurance Fund. Roughly 85 percent of flood policies are sold through WYO companies with the rest sold through the NFIP directly, by private insurance agents. The NFIP pays the WYO companies for their administration of the policies based on expenses incurred in other comparable lines of insurance, not their actual costs incurred for NFIP. In 2011, FEMA estimates that 30 cents of every premium dollar will be used to pay for administration. Of this amount, WYO companies are expected to earn roughly 11 cents of every premium dollar for administrative expenses and 3 cents to cover costs associated with adjusting claims and about 14 cents per dollar is allocated for agent commissions. WYO compensation for claims adjustments adjusts with the volume of claims, and has constituted a much higher percentage of premium income in high-claims years.

Today, there are more than 5.6 million flood insurance policies in force providing over \$1.2 trillion in coverage to individuals and businesses. The NFIP has made flood insurance available to the general public, especially those most at risk. Yet, there are a number of challenges currently facing the program which is roughly \$17.75 billion in debt in the wake of large losses in 2004 and 2005. Significant challenges include subsidized rates for certain properties, low participation rates, and non-compliance with mandatory purchase requirements, among others. These challenges have contributed to doubts about the financial soundness of the NFIP and its ability to be self-sustaining going forward, absent reform.

Properties with buildings that were built prior to the inception of the NFIP and the completion of flood insurance rate maps (pre-

FIRM properties) pay subsidized rates as intended by Congress. Congress believed that it was inequitable to require these property owners to pay actuarial rates, given that the structures were built prior to rate maps and knowledge of the risk and because actuarial premiums on these properties might be prohibitively expensive. Yet the cumulative effect of subsidized premiums for insuring these properties leaves the NFIP with fewer funds available to pay losses, especially in years with losses higher than anticipated for an average historical loss year. The NFIP estimates that \$1.5 billion in premium revenue is foregone annually due to subsidized rates—this is equal to half of the \$3 billion the NFIP currently collects in premiums. Nearly 22 percent of policies are priced using subsidized pre-FIRM rates. While Congress initially believed that over time pre-FIRM properties would be lost to flood, rebuilt, or mitigated, the phase-out of pre-FIRM properties has been slow. Modern construction techniques have extended the useful life of these buildings. To address the most at-risk properties, in 2004 Congress established the Severe Repetitive Loss Pilot program to mitigate those properties that experienced multiple flood losses. These properties remain a challenge to the NFIP, and Congress intends for FEMA to move toward further mitigation and actuarial pricing with respect to these pre-FIRM properties.

Rate subsidies have not been the only financial challenge to the NFIP. Flood maps are a critical component of the NFIP as they help identify risk, inform property owners, and help set boundaries of mandatory purchase requirements and rates. By the early 2000s, maps were outdated and, in many cases, inaccurate. FEMA, at the direction of Congress, has made significant progress in the last eight years updating data and flood maps and providing new tools to communities throughout the United States, thereby providing residents with a more accurate assessment of flood risks. As maps have been modernized to reflect current flood risks, some property owners have found themselves drawn into Special Flood Hazard Areas and subject to mandatory purchase requirements by their lenders, while roughly the same number have been removed from such areas and relieved of such requirements. While map modernization can be met with skepticism within communities, Congress believes that it is crucial in order to warn property owners about their flood risks and to ensure that insurance premiums are risk-based.

Participation in the program is not as robust as Congress anticipated. Since 1973, the purchase of flood insurance has been required for properties in the 100-year floodplain with federally-regulated mortgages. Such mandatory purchase is enforced through lenders and federal banking regulations, yet the compliance rate in covered areas is estimated to be as low as 50 percent (GAO Testimony, June 23, 2011). Voluntary purchases by property owners, either by those property owners without federally-backed mortgages or those with property outside areas requiring purchase, are low even when such properties are exposed to heightened risk.

Various levels of flood risk also exist outside the currently mapped 100-year floodplain. While there are only a small percentage of insured structures outside the 100-year floodplain, about 30 percent of all current NFIP policies, they account for a little over 20 percent of all NFIP losses. In addition, structures in “residual

risk areas,” including those protected by flood control structures such as dams or levees, are not currently required to purchase flood insurance. While the risk of flooding for these properties may be low, a flooding event caused by a breached or overtopped dam or levee is likely to be widespread and cause significant flood damage. Current mapping designations may not account for the nature of the risk and level of protection offered by such structures, which may lead consumers to underestimate their true risk of flood damage.

These and other financial challenges facing the NFIP call into question whether the program is actuarially sound in the aggregate and whether it can remain financially viable absent reform. While the program has been largely self-sustaining, the catastrophic nature of the 2005 hurricane season, coupled with the flood losses of 2004, has left FEMA heavily indebted to the U.S. Treasury. Due to the structure and the current financial situation of NFIP, reforms are needed.

#### PURPOSE OF THE LEGISLATION

This legislation makes several key reforms to ensure that the NFIP can continue to operate, adequately identify areas at risk of flood loss, inform property owners of their risks, improve local mitigation options, ensure that at-risk property owners purchase and maintain coverage and be self-sustaining.

This legislation will require FEMA to review flood insurance rates and use actuarial principles in setting those rates. FEMA will also be required to review and conduct rulemaking on WYO company payments so that reimbursements and actual administrative expenses are aligned. FEMA will also be required to build up, over time, a reserve fund equal to one percent of all insurance in force so that it can pay for flood claims in high loss years. These changes are designed to protect the taxpayer from having to lend taxpayer dollars to pay for flood insurance claims in all but the most catastrophic loss years. While most property owners are not expected to face significant increases in charged premiums as a result of this bill, certain structures will, over time, be required to pay actuarial rates: non-primary residences, including vacation homes and businesses, severe repetitive loss properties and properties substantially damaged or improved.

Under this bill, additional property owners will be required to purchase flood insurance. This legislation will require flood coverage for property owners in residual risk areas, those behind levees, downstream from dams, and near other flood control structures. Flooding events and losses in such areas in 2011 have demonstrated the need for purchase requirements with pricing reflecting the actual level of risk and flood protection. Property owners in the 100-year floodplain with mortgages provided through state-regulated lending institutions will now also be required to purchase flood insurance. In addition, the bill requires that flood insurance premiums be escrowed to ensure continuity of insurance coverage. Notice will be provided to property owners in the 500-year floodplain to inform them of their flood risks, which may lead to more owners protecting their properties through flood insurance.

The legislation also establishes a map modernization program so that maps continue to be updated, made more accurate, and readily

available. The Technical Mapping Advisory Council is re-established to ensure that FEMA adopts meaningful standards for mapping that are consistent and based on the most accurate data and information.

Mitigation of risks remains an important component of the NFIP. This legislation updates FEMA's existing mitigation grant programs to streamline and improve communities' access to existing mitigation funds. Among the streamlined programs is the Severe Repetitive Loss Program.

The bill also establishes a Commission on Natural Catastrophe Risk Management and Insurance that is to examine the risks posed to the United States by natural catastrophes and means for mitigating those risks and paying for losses, and report to Congress on its findings and recommendations. The Commission's examination is not limited to floods, but other types of natural catastrophes as well, such as hurricanes, earthquakes, volcanic eruptions, tsunamis, tornados, wildfires, and droughts.

#### HEARINGS

Building upon the numerous hearings the Committee held in the 109th and 110th Congresses, the Committee heard testimony in the 111th Congress on September 22, 2010, regarding proposals to reform the NFIP. The witnesses were: The Honorable Roger Wicker, United States Senator, Mississippi; the Honorable Richard Durbin, United States Senator, Illinois; Ms. Orice Williams Brown, Director of the Office of Financial Markets and Community Investment, U.S. Government Accountability Office; Ms. Sally McConkey, Vice Chair, Association of State Floodplain Managers; Mr. J. Nicholas D'Ambrosia, Vice President of Training and Recruiting, Long & Foster Companies on behalf of the National Association of Realtors; and Mr. Stephen Ellis, Vice President, Taxpayers for Common Sense.

In the 112th Congress, the Committee held two hearings regarding proposals to reform the NFIP. On June, 9, 2011, the witnesses testifying were: The Honorable Roger Wicker, United States Senator, Mississippi; and the Honorable William Craig Fugate, Administrator, Federal Emergency Management Agency. On June 23, 2011, the witnesses were: Ms. Orice Williams Brown, Director of the Office of Financial Markets and Community Investment, U.S. Government Accountability Office; Mr. Chad Berginnis, Associate Director, The Association of State Floodplain Managers; Mr. Adam Kolton, Executive Director, National Advocacy Center, National Wildlife Federation, on behalf of the Smarter Safer Coalition; Mr. Barry Rutenberg, First Vice Chairman of the Board, National Association of Home Builders; Mr. Travis B. Plunkett, Legislative Director, Consumer Federation of America; and The Honorable Scott H. Richardson, Partner, Richardson and Ritchie Consulting.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Flood Insurance Reform and Modernization Act of 2011.

## TITLE I—FLOOD INSURANCE REFORM AND MODERNIZATION

*Section 101. Short title**Section 102. Findings**Section 103. Definitions*

Includes definitions of 100-year floodplain, 500-year floodplain, Administrator, National Flood Insurance Program, and Write Your Own.

*Section 104. Extension of National Flood Insurance Program*

Reauthorizes the National Flood Insurance Program, and financing authority, through 2016.

*Section 105. Availability of insurance for multifamily properties*

Allows multifamily residential buildings, designed for occupancy of more than four families, to purchase flood insurance up to the limits for business properties.

*Section 106. Reform of premium rate structure*

Requires the following pre-FIRM properties to pay actuarial rates (rates that reflect the true risk of flooding) phased in over four years: non-primary residences; severe repetitive loss properties; any properties where flood losses have exceeded the property value; any business property; and any property that has sustained substantial damage or substantial improvement.

Requires that any premiums for a new flood insurance policy for a property not covered by a flood insurance policy as of the date of passage must be based on actuarial rates.

Allows FEMA to increase premiums by 15 percent per year, an increase from the current 10 percent cap on annual increases.

Adds a requirement for FEMA to allow policyholders that are not required to have their premiums escrowed every month with their lender to pay their premiums in installments. FEMA currently requires a single annual premium payment.

*Section 107. Mandatory coverage areas*

Expands the mandatory flood insurance purchase requirement to encompass “residual risk areas,” including areas located behind a flood control structure, such as a levee or dam. Once residual risk areas in the United States are mapped, properties in these areas will be required to purchase flood insurance. The price of such policies must accurately reflect the actual level of flood protection provided by the flood control structure in the area, regardless of a flood control structure’s certification status. With this requirement, policyholders protected by strong flood control systems will benefit from policies reflecting their lower levels of risk. Similarly, even policyholders near decertified flood control systems will receive appropriate credit for the protection provided by their local system.

*Section 108. Premium adjustment*

Requires that properties mapped into the 100-year floodplain must pay rates reflecting their new risk designation. Properties covered by flood insurance at the time of re-mapping, as well as newly mapped properties, will have the new rates phased-in over

four years, with 40 percent of the increase assessed in the first year, and assessments of 20 percent in each of the next three years.

*Section 109. State chartered financial institutions*

Requires the mandatory purchase of flood insurance for properties located in the 100-year floodplain with mortgages provided by state-regulated lending institutions. Mandatory purchase is already required for properties with mortgages provided by federally-regulated lending institutions.

*Section 110. Enforcement*

Increases penalties for lenders that fail to ensure compliance with flood insurance purchase requirements. Penalties are increased from \$350 to \$2000 per violation. This section also removes the limit on annual penalties.

*Section 111. Escrow of flood insurance*

Requires that lending institutions escrow flood insurance payments for properties that are located in mandatory purchase areas.

*Section 112. Minimum deductibles for claims under the National Flood Insurance Program*

Sets minimum deductibles. Minimum pre-FIRM property deductibles will be: (a) \$1,500 if the property is insured for \$100,000 or less; or (b) \$2,000 if the property has over \$100,000 in coverage. Minimum post-FIRM property deductibles will be: (a) \$1,000 for those with \$100,000 of coverage or less; or (b) \$1,250 if the coverage is greater than \$100,000.

*Section 113. Considerations in determining chargeable premium rates*

Requires FEMA to use actuarial principles in determining rates, and to consider catastrophic loss years in the calculation of the average historical loss year. FEMA prices premiums to cover, in aggregate, claims expected in an average historical loss year.

*Section 114. Reserve fund*

Requires FEMA to build up a reserve fund to help cover losses in years where claims are higher than expected as compared to losses in an average historical loss year. The reserve fund must maintain a balance equal to a reserve ratio of one percent of the sum of the total potential loss exposure of outstanding policies. In order to reach this requirement, FEMA will be required to put at least 7.5 percent of the reserve ratio into the fund each year until the reserve ratio is achieved.

*Section 115. Repayment plan for borrowing authority*

Requires the NFIP Administrator to submit a report and a repayment plan to the U.S. Department of Treasury and Congress Committees whenever FEMA has to borrow funds to pay for claims under the NFIP.

*Section 116. Payment of condominium claims*

Clarifies that condominium owners with flood insurance policies should receive claims payments regardless of the adequacy of flood insurance coverage of the condominium association and other condominium owners.

*Section 117. Technical Mapping Advisory Council*

Re-establishes the Technical Mapping Advisory Council to ensure that FEMA adopts meaningful standards for updating and maintaining flood insurance rate maps. The Technical Mapping Advisory Council will be comprised of government officials and others with expertise in mapping. The Council will make recommendations to FEMA on how to improve the accuracy of maps and on standards that should be adopted for flood rate maps, data, map maintenance efforts and funding needs and strategy.

Requires FEMA to report annually to Congress on recommendations made by the Technical Mapping Advisory Council, and actions taken by FEMA to address such recommendations.

*Section 118. National Flood Mapping Program*

Requires FEMA to establish an ongoing mapping program to review, update and maintain flood insurance rate maps, including all areas within the 100-year and 500-year floodplains and residual risk areas, including those behind flood control structures. Requires that the most accurate data be used in mapping and maintenance, and requires that each map include certain elements to ensure consistency and accuracy. Authorizes \$400 million annually for mapping. Directs FEMA to enhance communication and outreach to States, local communities, and property owners regarding mapping changes and mandatory purchase requirements.

*Section 119. Scope of appeals*

Permits community map appeals to address the Special Flood Hazard Area boundary in addition to the Base Flood Elevation.

*Section 120. Scientific Resolution Panel*

Establishes an independent Scientific Resolution Panel that will, in general, address mapping-related concerns from communities that are dissatisfied with the outcome of their appeal to FEMA. The provision would also authorize certain communities that have already been re-mapped to use the new Panel to rule on Letters of Map Revision.

*Section 121. Removal of limitation on State contributions for updating flood maps*

Removes the restriction that States may only contribute up to 50 percent of the cost of mapping and allows States to invest additional funds for mapping.

*Section 122. Coordination*

Requires the various federal agencies to work together to coordinate mapping and risk determination budgeting, and requires the Office of Management and Budget, FEMA and others to submit a joint report to Congress within 30 days of the budget submission on crosscutting budget issues with respect to mapping.



*Section 123. Interagency coordination study*

Requires FEMA to contract with the National Academy of Public Administration to conduct a study on how FEMA can improve interagency coordination on mapping and funding, and how FEMA can establish joint funding mechanisms with federal, State and local agencies to share the collection and use of data for mapping.

*Section 124. Nonmandatory participation*

Reaffirms that those in the 500-year floodplain are not required to purchase flood insurance but requires that communities be given notice when they are mapped into a 500-year floodplain, and requires lenders to give notice to purchasers or lessees of property in the 500-year floodplain.

*Section 125. Notice of flood insurance availability under RESPA*

Amends the Real Estate Settlements Procedures Act (RESPA) and requires lenders provide a disclosure of the availability of flood insurance under the NFIP and whether or not the property is located in an area having special flood hazards to all purchasers.

*Section 126. Participation in State disaster claims mitigation*

Requires FEMA, under certain circumstances, at the request of a State insurance commissioner, to participate in State sponsored, non-binding mediation to resolve insurance claims disputes when a disaster has been declared and claims for other types of insurance are also pending.

*Section 127. Additional authority of FEMA to collect information on claims payments*

Requires the NFIP to collect from WYO companies information and data as needed to determine the accuracy of the resolution of flood claims under NFIP flood insurance policies following a flood.

*Section 128. Oversight and expense reimbursements of insurance companies*

Requires that FEMA collect accurate and adequate information on WYO company expenses. Under this section, FEMA is required to develop a methodology for determining what WYO companies should be reimbursed for their activities under the NFIP. All WYO companies will be required to submit data based on that methodology. Using that data, FEMA will be required to conduct a rule-making on reimbursement rates to ensure that WYO companies are being reimbursed based on actual expenses, including standard business costs and operating expenses. GAO will report to Congress on the efficacy of the rules.

*Section 129. Mitigation*

Reforms and streamlines existing FEMA mitigation programs.

*Section 130. Flood protection structure accreditation task force*

Requires FEMA and the Army Corps of Engineers, in cooperation with the National Committee on Levee Safety, to form a task force to better align the data that the Corps collects during levee inspections with the data required under FEMA's accreditation program.

*Section 131. Flood in progress determinations*

Requires FEMA to conduct a study examining, among other things, the process for determining when a flood event has commenced or is in progress for purposes of NFIP flood insurance coverage. This section also clarifies the meaning of “eligible coverage” for purposes of recent Missouri River flooding.

*Section 132. Clarification of residential and commercial coverage limits*

Clarifies current statutory limits on coverage of multi-business commercial structures.

*Section 133. Local data requirement*

Requires that FEMA re-map certain communities that were originally mapped using data not specific to the community, using locally relevant data.

*Section 134. Eligibility for flood insurance for persons residing in communities that have made adequate progress on the construction, reconstruction, or improvement of a flood protection system*

Requires the Administrator to provide flood insurance at a rate similar to that provided to people that reside behind a completed levee, to people who live behind a levee, or other flood control system, that is undergoing construction, reconstruction, or improvements which the Administrator deems to have met certain requirements regarding the current status of the levee and a timetable for completion of the project. Establishes a system of consultations between the levee owner and the Administrator to determine if the construction, reconstruction, or improvement project has a reasonable likelihood of completion on schedule.

*Section 135. Studies and reports*

Requires FEMA to submit an annual report to Congress on its activities and financial health, including the amount paid in premiums; losses; expenses; number of policies; insurance in force; estimate of average historical loss year; and a description and amount of claims paid.

Requires GAO to conduct a study of pre-FIRM structures and requires GAO, in consultation with the Department of Homeland Security Office of Inspector General, to review the three largest contractors used by FEMA in operating and managing the flood insurance program.

*Section 136. Reinsurance*

Requires FEMA to conduct an assessment of the private reinsurance market’s capacity to assume a portion of the NFIP’s insurance exposure. The section clarifies that FEMA is authorized to secure reinsurance from the private market. It also requires FEMA to include in their annual report to Congress an assessment of NFIP’s ability to pay claims, as well as any use of FEMA’s authority to secure reinsurance.

*Section 137. GAO study on business interruption and additional living expenses coverage*

Requires the GAO to conduct a study on the possibility of including optional business interruption and/or additional living expenses coverage, and the effects that these optional coverage options could have on the NFIP.

*Section 138. Policy disclosures*

Requires additional disclosures for policies under the NFIP, and provides for fines.

*Section 139. Report on inclusion of building codes in floodplain management criteria*

Requires FEMA to conduct a study and report to Congressional Committees regarding the impact, effectiveness, and feasibility of amending section 1361 of the National Flood Insurance Act of 1968 to include widely used and nationally recognized building codes as part of the floodplain management criteria.

*Section 140. Study of participation and affordability for certain policyholders*

Requires FEMA to conduct a study on possible methods to encourage and maintain participation in the NFLP, as well as making the NFIP more affordable for certain people through targeted assistance. The study also will include an economic analysis provided by the National Academy of Sciences.

*Section 141. Study and report concerning the participation of Indian tribes and members of Indian tribes in the National Flood Insurance Program*

Requires the GAO to conduct a study and report to Congress on the factors contributing to the currently low rate of participation of Indian tribes and members of Indian tribes in the NFIP, and methods which can be used to encourage more participation by Indian tribes and their members.

*Section 142. Technical corrections*

TITLE II—COMMISSION ON NATURAL CATASTROPHE RISK MANAGEMENT AND INSURANCE

*Section 201. Short title*

*Section 202. Findings*

*Section 203. Establishment*

Establishes a nonpartisan Commission on Natural Catastrophe Risk Management and Insurance.

*Section 204. Membership*

Requires that the Commission be composed of 16 congressionally appointed members from a broad cross section of subject matter experts.

*Section 205. Duties of the Commission*

Requires that the Commission examine the risks posed to the United States by natural catastrophes and means for mitigating those risks and for paying for losses caused by natural catastrophes.

*Section 206. Report*

Requires that the Commission submit a report to Congressional Committees no later than 9 months after the date of the enactment of the title on its findings and recommendations, unless the time is extended.

*Section 207. Powers of the Commission*

Authorizes certain powers with which the Commission will conduct its duties, including scheduling of meetings and obtaining data.

*Section 208. Commission personnel matters*

Requires the Commission to operate under certain personnel rules.

*Section 209. Termination*

Requires that the Commission terminate 90 days after the date on which it submits its report under Section 206.

*Section 210. Authorization of appropriations*

Authorizes congressional appropriations for this Commission.

## COST OF LEGISLATION

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 1940—Flood Insurance Reform and Modernization Act of 2011*

Summary: The legislation would authorize the National Flood Insurance Program (NFIP) of the Federal Emergency Management Agency (FEMA) to enter into and renew flood insurance policies through fiscal year 2016. Under current law, the NFIP's authority will expire on November 18, 2011.

The legislation would make a number of changes to the NFIP aimed at improving the financial status of the program. Under both current law and this legislation, the NFIP may borrow an additional \$3 billion from the Treasury (the program's current debt stands at \$17.8 billion). Assuming some probability of a rare catastrophic event in the future, CBO expects that this borrowing authority will be exhausted in 2014. The changes made by the bill would improve the financial condition of the program and reduce its need to borrow from the Treasury—a source of direct spending—by a total of \$380 million between 2012 and 2014, CBO estimates. However, because the program would continue to operate with insurance premiums that are not sufficient to cover all expected costs, CBO estimates that the NFIP would still need to borrow up to the statutory limit by 2015 and that reduced borrowing from 2012 to 2014 would be offset by increased borrowing in 2015, resulting in no net effect on direct spending over the next 10 years.

Over the 2012–2021 period, CBO estimates that the changes made by this legislation would increase net income to the NFIP by about \$4.7 billion, improving the financial status of the program by that amount. However, under current law, the program will not have enough resources to pay all of the claims that will be due over that period. Therefore, we expect that additional income earned by the program would be used to fulfill obligations to flood insurance policyholders that would otherwise be delayed, resulting in no net effect on direct spending over the next 10 years.

The bill also would increase civil penalties on mortgage lenders and government-sponsored enterprises that act in violation of current law. Additional amounts collected under the bill would be recorded as revenues and would total about \$1 million per year, CBO estimates, reducing budget deficits by \$10 billion over the 2012–2021 period. Because enacting the legislation would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that implementing the legislation would have a discretionary cost of almost \$1.6 billion over the 2012–2016 period, subject to appropriation of the necessary and specified amounts. Most of that spending would be for FEMA’s flood mapping program. The bill also would authorize appropriations for: mitigation grants, establishment of a Commission on Natural Catastrophe Risk Management and Insurance, and numerous studies and assessments undertaken by FEMA and the Government Accountability Office (GAO).

The bill would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) by directing state regulatory agencies to require, and state lenders to provide, information on flood risk and insurance to more mortgage borrowers. CBO estimates that the cost of those intergovernmental mandates to state governments would be small and well below the annual threshold established in UMRA (\$71 million in 2011, adjusted annually for inflation).

The legislation also would impose private-sector mandates, as defined in UMRA, on certain mortgage lenders. Based on information from industry sources and FEMA, CBO expects the direct costs to comply with those mandates would fall below the annual threshold for private-sector mandates established in UMRA (\$142 million in 2011, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of this legislation is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development).

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the beginning of fiscal year 2012, that increases in insurance premiums for certain properties will be implemented by the spring of 2012, and that amounts specified and estimated to be necessary will be appropriated for each year.

### *Background*

Authority to Underwrite Coverage. The NFIP was established to encourage the purchase of flood insurance by property owners located in communities that adopt minimum guidelines for floodplain management and enforce building codes designed to mitigate flood damages. Flood insurance coverage is mandatory for properties lo-

cated within an area designated as having at least a 1 percent chance of being flooded in any year (such an area is known as a Special Flood Hazard Area, or SFHA) and financed by a federally regulated lending institution, government-sponsored enterprise for housing, or federal lender. Property owners not receiving financing from those entities or located outside a SFHA may purchase flood insurance coverage from a private carrier or the NFIP at their discretion. Under current law, FEMA is authorized to underwrite the sale and renewal of flood insurance policies through November 18, 2011.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF THE FLOOD INSURANCE REFORM AND MODERNIZATION ACT AS ORDERED REPORTED BY THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS ON SEPTEMBER 8, 2011

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012-2016	2012-2021
CHANGES IN DIRECT SPENDING												
Estimated Budget Authority .....	-25	-125	-230	380	0	0	0	0	0	0	0	0
Estimated Outlays .....	-25	-125	-230	380	0	0	0	0	0	0	0	0
CHANGES IN REVENUES												
Increased Civil Penalties .....	1	1	1	1	1	1	1	1	1	1	5	10
NET INCREASE OR DECREASE (-) IN THE DEFICITS FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Impact on Deficit .....	-26	-126	-231	379	-1	-1	-1	-1	-1	-1	-5	-10
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Flood Mapping Program:												
Authorization Level .....	400	400	400	400	400	0	0	0	0	0	2,000	2,000
Estimated Outlays .....	80	240	320	400	400	320	160	80	0	0	1,440	2,000
Mitigation Assistance Grants:												
Authorization Level .....	40	40	40	40	40	40	40	40	40	40	200	400
Estimated Outlays .....	2	8	20	34	38	40	40	40	40	40	102	302
Commission on Natural Catastrophe Risk Management and Insurance:												
Estimated Authorization Level .....	2	0	0	0	0	0	0	0	0	0	2	2
Estimated Outlays .....	2	0	0	0	0	0	0	0	0	0	2	2
Studies and Reports:												
Estimated Authorization Level .....	6	1	1	1	1	1	1	1	1	1	10	15
Estimated Outlays .....	6	1	1	1	1	1	1	1	1	1	10	15
Total Changes:												
Estimated Authorization Level .....	448	441	441	441	441	41	41	41	41	41	2,212	2,417
Estimated Outlays .....	90	249	341	435	439	361	201	121	41	41	1,554	2,319

**Subsidized Premiums.** Throughout the program's history, FEMA has charged premiums well below the amount necessary to offset the expected cost (also known as the full-risk or actuarial cost) for properties built before a community's Flood Insurance Rate Map (FIRM) was completed, or before 1975, whichever is later. Those properties, known as pre-FIRM properties, make up over 20 percent of all NFIP policies. FEMA estimates that pre-FIRM policyholders pay average premiums that are about 40 percent to 45 percent of the full-risk cost. Owners of some post-FIRM properties also pay discounted premiums under current law; however, they are few in number (less than 1 percent of all NFIP policies) relative to pre-FIRM properties. It is unclear whether other property owners re-

ceive premium subsidies not directly specified in law.<sup>1</sup> For this estimate, CBO assumes that all policies not directly receiving subsidies will generate a sufficient amount of income to cover expected claims and related expenses over time.

**Ability to Pay Claims and Other Expenses.** The National Flood Insurance Fund (NFIF) is the sole source of claims payments and other expenses associated with the NFIP. Under current law, the fund is credited with premium and fee receipts from policyholders, annual appropriations, interest earned on fund balances, and amounts borrowed from the Treasury. As of July 2011, the NFIP insured approximately 5.6 million policies with written annual premiums in place of \$3.4 billion. For fiscal year 2011, the Congress provided the fund with \$169 million in appropriations, offset by an equivalent amount of additional fee collections from policyholders (see Public Law 112–10). No interest income will be earned and no borrowing is expected to occur this year, CBO estimates.

The majority of the NFIP's expenses consist of payments for insured claims resulting from outstanding coverage in place, which currently stands at about \$1.2 trillion. FEMA estimates that claims payments and other delivery and underwriting expenses in 2011 will total about 80 percent of premium and fee income, based on the historical experience of policies and coverage amounts for properties currently insured by the program. Actual expenses for insured claims, however, have varied widely by year, ranging from less than 10 percent of premiums to almost 800 percent of premiums (based on calendar year totals).

In most years, annual appropriations along with premium and fee income have been sufficient to cover the annual expenses of the NFIP. Prior to 2005, it was occasionally necessary for the program to borrow from the Treasury to meet expenses during greater-than-average loss years; however, that borrowing was relatively small (less than \$1 billion) and was repaid with interest. Nonetheless, because of the large subsidy that exists for many policies, CBO estimates that the program will—on average—have greater annual expenses than revenue. This differential became apparent in the aftermath of Hurricanes Katrina, Rita, and Wilma in 2005. Because of the severe and widespread damages experienced during those storms, the program borrowed an unprecedented \$16.7 billion in fiscal year 2006 to cover claims and interest expenses. NFIP's current debt to the Treasury stands at \$17.8 billion. It is highly unlikely that the program will have sufficient income to repay those borrowed funds within the next 10 years.

Assuming actuarial-level losses in 2012 and beyond, the NFIP will need to continue borrowing from the Treasury until its line of credit (currently set at \$20.7 billion) is exhausted, which CBO estimates will occur in 2014 under current law.<sup>2</sup> At this point, because expenses of the program may only be paid to the extent that resources in the NFIF are available, net spending would be zero for a given fiscal year. Payments for claims and other expenses would be delayed until sufficient resources became available to the NFIF from premium and fee collections. If the delay for such claims were

<sup>1</sup> See Congressional Budget Office, *The National Flood Insurance Program: Factors Affecting Actuarial Soundness* (November 2009).

<sup>2</sup> Actuarial-level losses take into account the full range of possible losses, including rare catastrophic events like Hurricane Katrina.

to become untenable, policyholders might seek claims payments through a lawsuit. It is unclear how that matter would be resolved.

*Direct spending and revenues*

CBO estimates that enacting this legislation would have no net impact on direct spending over the 2012–2016 or 2012–2021 periods. We estimate that enacting the bill would increase revenues from the collection of civil penalties by about \$1 million per year over those periods.

Section 104 of the legislation would provide FEMA with the authority to continue selling and renewing policies through fiscal year 2016. While this authority would otherwise expire in fiscal year 2012, the program is assumed to continue in the CBO baseline, consistent with rules governing baseline projections of mandatory programs. Thus, extending the NFIP under this legislation would have no effect on direct spending relative to the baseline.

In addition to extending the NFIP, the legislation would make a number of changes to the program. The changes that would affect direct spending are:

- Premium increases for some pre-FIRM policyholders;
- Temporarily discounted premiums for new and existing policyholders that are required to pay a higher premium under a revised FIRM; and
- Required capitalization of a reserve fund.

The aggregate budgetary effects of those changes are shown in Table 2.

The bill also would increase the minimum policy deductible and the average annual limit on premium growth. CBO estimates that those changes would not affect net direct spending.

Overall, CBO estimates that changes made by this legislation would increase net income to the NFIP by \$380 million through 2014. CBO expects that the flood insurance program will not have exhausted its remaining borrowing authority during this period. Therefore, additional net income of the NFIP over that period would reduce expected borrowing from the Treasury—a source of direct spending. However, assuming annual program deficits, CBO estimates that any reduction in direct spending in those years would be offset by increased direct spending financed by additional borrowing in 2015 (up to the limit on the NFIP’s borrowing from the Treasury), resulting in no net effect on the federal budget over the next 10 years.<sup>3</sup> After the borrowing authority of the NFIP has been exhausted, the changes made by the legislation would not affect net direct spending because CBO expects that any additional income earned by the program would be used to fulfill obligations (mostly claims payments) that would otherwise be delayed. However, enactment of the legislation would improve the financial status of the program by reducing this “backlog” of unfulfilled payments. Under current law, CBO estimates that delayed payments would total \$3.6 billion by 2016 and \$12.6 billion by 2021. Under this legislation, we estimate that the “backlog” would total \$2.3 bil-

<sup>3</sup>CBO estimates that changes made by the legislation would reduce the aggregate subsidy built into premiums under current law by about 50 percent by 2021; however, because the legislation would not completely eliminate subsidies for all policies, we estimate that the program would typically continue to operate with a deficit.



lion in 2016 and \$8.0 billion in 2021, a reduction of about \$1.3 billion and \$4.7 billion, respectively.

TABLE 2.—CHANGE IN NET INCOME TO THE NFIP UNDER THE FLOOD INSURANCE REFORM AND MODERNIZATION ACT OF 2011 OVER SELECTED TIME PERIODS

	By fiscal year, in millions of dollars—		
	2012–2014	2012–2016	2012–2021
<b>Receipts:</b>			
Premium Increases for Some Pre-FIRM Policies .....	362	1,310	4,565
Temporarily Discounted Premiums .....	– 12	– 20	– 50
Additional Premiums to Capitalize Reserve Fund .....	50	154	775
<b>Total Changes to Receipts .....</b>	<b>400</b>	<b>1,444</b>	<b>5,290</b>
<b>Expenses:</b>			
Increased Payments to WYO Companies .....	120	438	1,600
Reduced Claims Due to Dropped Policies .....	– 100	– 274	– 975
<b>Total Changes to Expenses .....</b>	<b>20</b>	<b>164</b>	<b>625</b>
Change in Net Income <sup>a</sup> .....	380	1,280	4,665
Cumulative Net Effect on Direct Spending .....	– 380	0	0

<sup>a</sup>After the NFIP's borrowing authority has been exhausted, changes in net income are reflected as a corresponding increase or decrease in the delayed payments of claims and do not affect direct spending.

Note: FIRM = Flood Insurance Rate Map; WYO = Write-Your-Own.

**Premium Increases for Some Pre-FIRM Properties.** Section 106 would direct FEMA to increase flood insurance premiums for certain pre-FIRM properties, including nonresidential properties, non-primary residences, and severe repetitive loss properties (defined as residences with at least four paid claims greater than \$5,000 or with two paid claims that cumulatively exceed the market value of the house). Following the first rate adjustment that occurs at least three months after enactment (which CBO assumes would take place in the spring of 2012), policyholders of properties fitting the criteria of the bill would begin receiving premium increases of 25 percent per year until the amount collected covers the full cost of the insurance.<sup>4</sup> New policies that fit such criteria would pay the full-risk premium beginning three months after enactment.

Based on current policy information obtained from FEMA, CBO estimates that more than 440,000 existing policies would be subject to such premium increases under this provision. Those policyholders currently pay an average premium of about \$1,174 per year. Once subsidies are completely phased out, we expect that annual premiums for those policies would be, on average, about two and one-quarter times greater than the premium that would otherwise be charged under current law. While some policyholders would reduce or eliminate coverage as a result of those increases, CBO estimates that any resulting decrease in premium receipts would be more than offset by increases from properties that remain in the program.

Additional premium receipts from pre-FIRM policyholders would total about \$1.3 billion over the 2012–2016 period and about \$4.6 billion over the next 10 years, CBO estimates. Under current agreements, Write-Your-Own (WYO) companies would receive a portion of that additional premium (about 30 percent), as shown in

<sup>4</sup>The 25 percent would include some increase that FEMA would have applied to the policy under current law; thus, the increase in the per-policy premium attributable to this legislation would be less than 25 percent.

Table 2, to offset an increase in expenses. Subsidized policyholders that drop out of the NFIP would save the program the cost of paying claims on those policies, resulting in a decrease in expenses. As a whole, CBO estimates that implementing the premium increases outlined in the legislation would increase net income to the NFIP by \$1.2 billion over the next five years and by about \$3.9 billion over the 2012–2021 period.

**Temporarily Discounted Premiums.** Section 108 would direct FEMA to phase in increases to the premiums it charges as a result of an updated FIRM. The phase-in would occur over a four-year period following the effective date of the updated map. In the first year, policyholders would pay 40 percent of the increase they would otherwise be charged. In each year thereafter, premiums would increase by an additional 20 percent until the full increase is implemented in the fourth year.

For some properties newly mapped into a SFHA, FEMA would charge a higher premium under this section than would otherwise be charged under current law. This assumes that FEMA’s Preferred Risk Policy (PRP) Extension program, currently available to properties newly mapped into a SFHA, is discontinued.<sup>5</sup> For some policies, the aggregate discount under the PRP Extension program would be greater than the discount those policies would receive under this bill. For some other policies, including those not eligible for the PRP Extension program, the aggregate discount under the bill would be greater. On net, CBO estimates that implementing this section would decrease premiums received from properties newly mapped into a SFHA by \$50 million over the next 10 years relative to current law. Net income to the NFIP would fall by a lesser amount (\$35 million) because of reduced payments to WYO companies.

For properties already located within the 100-year floodplain, the net effect of this provision is less certain. Under current law, an existing policyholder determined to be at a higher risk under an updated map is “grandfathered” into the lower-risk class as long as the policy remains active. Those policies might see premium increases under this bill; however, those increases would be offset by new policies that receive a discount. CBO does not have sufficient data to estimate the number of policies that are currently “grandfathered” into lower-risk classes nor the number of new policies already in an SFHA that would receive a discount under the bill.

**Require Capitalization of a Reserve Fund.** Section 114 would require FEMA to establish a National Flood Insurance Reserve Fund with a balance equal to at least 1 percent of flood insurance coverage in place during the previous year. While the bill does not specify a date for full capitalization, the NFIP would be required to deposit an amount into the fund equal to at least 7.5 percent of the target ratio each year. Under the legislation, FEMA would have the authority to increase premiums each year (up to the 15 percent maximum allowed by the bill) as necessary to make the re-

<sup>5</sup>For properties newly mapped into a SFHA after October 1, 2008, that previously qualified for a PRP premium (that is, could not have two or more claims or disaster relief payments of \$1,000 or more, or three losses or payments of any kind), FEMA currently offers a discount equal to the difference between the premium the policyholder would have paid and the PRP premium. That discount is available for two years. For properties mapped into a SFHA after October 1, 2008, and before January 1, 2011, the discounted premium is available for the two policy years effective between January 1, 2011, and December 31, 2012.

quired deposit; however, a smaller deposit would be allowed in years when excess premium receipts were less than sufficient (due to higher-than-expected expenses).

Under current law, FEMA charges flood insurance premiums that are greater than the historical average cost of such coverage.<sup>6</sup> The main purpose of such charges is to build surpluses (or pay down debt) for future years when costs may be greater than historical averages. Because the reserve fund would be used for a similar purpose, CBO assumes that FEMA would adjust premiums so that aggregate receipts would exceed historical average costs by an amount roughly equal to the required contribution to the fund under the bill. Thus, during a year when costs equal historical averages, the program would collect exactly enough to make the full required deposit. Using this approach and assuming historical premium growth and insurance coverage growth of about 5 percent, CBO estimates that the aggregate premiums that would be collected under current law would not be sufficient during a historical average year to make the capital deposit required by the bill. Therefore, CBO expects that FEMA would increase premiums as a result of this provision. We estimate that those additional premiums would increase the net income of the NFIP by about \$735 million over the next 10 years after accounting for additional payments made to WYO companies.

**Increase in the Minimum Policy Deductible.** Section 112 would increase the minimum deductible for some flood insurance policies. For the current policy year (which began in October 2010), the standard deductible is \$2,000 for most subsidized properties and \$1,000 for nonsubsidized properties; however, pre-FIRM policyholders may reduce that deductible by \$1,000 in exchange for a higher premium.

CBO estimates that about 255,000 pre-FIRM policies currently carry deductibles below levels required by the bill and thus would be affected by this provision. We do not have enough information to determine the number of post-FIRM policies that would be affected. By increasing the insurance deductible on some flood insurance policies, this legislation would reduce average insured claims. However, because the bill would not change the amount of subsidized coverage, we expect that premium receipts would decline by an equivalent amount over time, resulting in no net impact to the NFIP or the federal budget.

**Increase in Average Annual Limit on Premium Growth.** Section 106 would authorize the NFIP to increase premiums within a specific risk category by an average of up to 15 percent per year. Under current law, the limit is 10 percent. Based on historical experience, CBO assumes that raising this limit would not result in annual premium increases of more than 10 percent for most subsidized policies (with the exception of policies that would receive larger premium increases because of other sections of this legislation). (Under both current law and this legislation, actuarially rated policies are assumed to receive premium increases necessary

<sup>6</sup>The historical average cost for a flood insurance policy is not necessarily equal to the full-risk, or actuarial, cost. Historical average costs reflect actual losses observed over some period of time (in this case, between 1978 and 2008) and does not include the full range of possible losses that have not yet occurred. Because of this, actuarial loss estimates are much greater than historical costs for some properties.

to cover the full cost of the coverage but not additional amounts to subsidize those policyholders that pay insurance premiums that are below actuarial rates.) Therefore, implementing this provision would have no net effect on the NFIP or the federal budget.

**Civil Penalties.** Section 110 would increase the civil penalty from \$350 to \$2,000 for lenders and government-sponsored enterprises that violate current law and would eliminate the limit on the aggregate amount of penalties that could be assessed on any single institution in one year. CBO estimates that the increased revenues from penalty collections would amount to about \$1 million a year.

**Study on Affordability.** Section 140 would authorize FEMA to use up to \$750,000 from the NFIP to conduct a study on the participation and affordability of flood insurance for certain eligible policyholders. Spending for the study would not be subject to appropriation. CBO estimates that enacting this provision would increase costs to the NFIP, and thus reduce net income to the program, by \$750,000 in 2012, requiring additional borrowing in that year. The additional borrowing in 2012 would be offset by reduced borrowing in 2015 (when CBO expects that the NFIP's ability to borrow would be exhausted), resulting in no net impact on the federal deficit over the next 10 years.

#### *Changes subject to appropriation*

CBO estimates that the discretionary costs of implementing this bill would be about \$1.6 billion over the 2012–2016 period, subject to appropriation of the necessary amounts.

**Flood Mapping Program.** Section 118 would authorize the appropriation of \$400 million for each of fiscal years 2012 through 2016 to update and maintain flood maps. In 2011, the Congress provided \$182 million for this activity (see Public Law 112–10).<sup>7</sup> Under the bill, FIRMs would be regularly updated to include all populated and potentially populated areas located in the 100- and 500-year floodplains, areas of residual risk, and the level of protection provided by flood control structures. Based on historical spending patterns, CBO estimates that implementing this provision would cost about \$1.4 billion over the 2012–2016 period and an additional \$560 million in later years.

**Mitigation Assistance Grants.** Section 129 would consolidate several existing mitigation programs of the NFIP and would increase authorized spending for those programs by a total of \$40 million a year. Under current law, FEMA operates three separate programs that provide grants to state and local governments to purchase, relocate, or elevate NFIP-insured properties—the Flood Mitigation Assistance (FMA) program, the Repetitive Flood Claims (RFC) program, and the Severe Repetitive Loss (SRL) program. Current law authorizes the appropriation of \$40 million and \$10 million per year, respectively, for the FMA and RFC programs. The SRL program is not authorized in fiscal year 2012 or beyond under current law.

The legislation would consolidate the three existing mitigation programs of the NFIP into a Mitigation Assistance Grant program and would authorize the appropriation of \$90 million per year—an

<sup>7</sup>That law also made available up to \$147 million for floodplain management and mapping; however those amounts were to offset through additional collections from policyholders through the Federal Policy Fee.

increase of \$40 million over current law—for those activities. The bill also would adjust the federal cost share and allow for grants to be made directly to property owners in certain cases. Based on historical spending for flood mitigation activities, CBO estimates that implementing this provision would cost \$102 million over the 2012–2016 period, assuming appropriation of the specified amounts.

**Commission on Natural Catastrophe Risk Management and Insurance.** Title II of the legislation would establish a 16-member Commission on Natural Catastrophe Risk Management and Insurance. The commission would report to the Congress on various aspects of public and private insurance markets and efforts to mitigate losses in future disasters within one year after enactment. The commission would terminate 90 days after issuing this report. Based on historical costs for current and previous commissions of similar size and scope, CBO estimates that implementing this provision would cost \$2 million in 2012, assuming appropriation of the necessary amounts.

**Studies and Reports.** The legislation would direct FEMA and GAO to conduct studies and issue reports on a number of topics. Some of those studies, including research on expanding the program to include coverage for business interruption and living expenses, the purchase and affordability of reinsurance, inclusion of building codes, and reimbursement expenses of WYO companies, would conclude after a set period of time. Other reports on inter-agency coordination, program activities, and claim-paying ability would occur annually. Based on the cost of similar studies, CBO estimates that producing the reports required under the legislation would cost about \$10 million over the next five years, assuming the availability of appropriated funds.

**Other Discretionary Changes.** The legislation would make a number of other changes that CBO estimates would not affect net discretionary spending for the NFIP. Those changes include establishing a Technical Mapping Advisory Council (section 117) and a Scientific Resolution Panel (section 120). The Technical Mapping Advisory Council would be an 18-member council that would review and recommend new and existing mapping standards for FIRMs. The five-member Scientific Resolution Panel would assist in settling disputes between FEMA and communities related to revisions to a flood map.

Under current law, spending for floodplain management activities (which CBO assumes would include operations of the Technical Mapping Advisory Council and the Scientific Resolution Panel) are subject to approval in appropriation acts. FEMA is authorized to offset those costs through the collection of a fee (known as the Federal Policy Fee) from policyholders. As such, CBO estimates that implementing this section would have no net effect on discretionary spending over the next five years, assuming appropriations of the necessary amounts and corresponding increases in fee collections.

**Pay-As-You-Go considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR THE FLOOD INSURANCE REFORM AND MODERNIZATION ACT OF 2011 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS ON SEPTEMBER 8, 2011

	By fiscal year, in millions of dollars—											
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2012–2016	2012–2021
NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	–26	–126	–231	379	–1	–1	–1	–1	–1	–5	–5	–10
Memorandum:												
Changes in Outlays .....	–25	–125	–230	380	0	0	0	0	0	0	0	0
Changes in Revenues .....	–1	–1	–1	–1	–1	–1	–1	–1	–1	–1	–5	–10

Estimated impact on state, local, and tribal governments: The bill would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act. It would require state agencies that regulate mortgage lenders to require that those lenders provide borrowers with information about flood insurance if the property covered by the mortgage is located in the 500-year floodplain. It also would require state agencies that directly offer mortgages to provide such information and to notify borrowers about how to continue flood insurance coverage once the mortgage is repaid in full. Based on conversations with industry representatives, CBO estimates that the cost to state regulatory agencies would be minimal, and the number of loans for which state agencies would be required to provide flood insurance information would be small. The total cost for state agencies to comply with those requirements would be well below the annual threshold established in UMRA for intergovernmental mandates (\$71 million in 2011, adjusted annually for inflation).

Estimated impact on the private sector: The bill would require mortgage lenders when making, increasing, extending, or renewing any loan secured by property located in an area within the 500-year floodplain to notify the purchaser or lessee and the servicer of the loan that such property is located in the 500-year floodplain. The bill also would require certain mortgage lenders to notify policyholders that insurance coverage may cease with the final mortgage payment and to provide direction as to how the homeowner may continue flood insurance coverage after the life of the loan. In addition, certain mortgage lenders would be required to deposit premiums and fees for flood insurance in an escrow account on behalf of the borrower. Finally, the bill would require lenders to provide all purchasers a disclosure of the availability of flood insurance under the Real Estate Settlements Procedures Act. According to industry representatives, the cost for mortgage lenders to provide the additional notices and information and to escrow flood insurance payments would be small. Therefore, CBO estimates that the aggregate direct cost of complying with the mandates would fall below the annual threshold for private-sector mandates established in UMRA (\$142 million in 2011, adjusted annually for inflation).

Previous CBO estimate: On June 8, 2011, CBO transmitted a cost estimate for H.R. 1309, the Flood Insurance Reform Act of 2011, as ordered reported by the House Committee on Financial Services on May 13, 2011. CBO estimates that both this legislation and H.R. 1309 would have no net impact on direct spending over the 2012–2016 and the 2012–2021 periods. This legislation would

increase federal revenues by about \$1 million a year more than H.R. 1309 because of additional civil penalties for lenders and other entities included in the bill.

CBO estimates that enacting this legislation would increase net income to the NFIP by about \$500 million more than H.R. 1309 over the next 10 years. This difference mainly results from the faster phase-in of actuarial rates for certain pre-FIRM properties and the expected collection of additional premiums to capitalize the reserve fund under this bill. CBO expects that fewer pre-FIRM policies would be subject to premium increases under this legislation, relative to H.R. 1309; that would only partially offset the increase in net income to the NFIP attributable to other effects.

CBO estimates that the discretionary cost for this legislation would be \$1.2 billion higher over the 2012–2016 period than that for H.R. 1309. About \$1.1 billion of that difference would be for FEMA to revise and update flood maps. The majority of the remaining difference is attributable to additional funding for mitigation grants under this bill. (H.R. 1309, as passed by the House of Representatives on July 12, 2011, includes a similar increase in funding for mitigation grants, but that provision was not a part of the version estimated by CBO.)

H.R. 1309 also contains a mandate on private mortgage lenders that would require them to accept flood insurance from a private company if the policy fulfills all federal requirements for flood insurance. The bill would also require such mortgage lenders to include specific information about the availability of flood insurance in each good-faith estimate. Those mandates are not contained in the Senate legislation; CBO estimated that the cost of complying with those mandates would be small and fall below the annual threshold.

Estimate prepared by: Federal costs: Daniel Hoople; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b), rule XXVI, of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of the bill.

This legislation seeks to address several deficiencies within the structure of the NFIP. Section 109 of this legislation requires states, as a requirement of participation in the program, to require state-chartered financial institutions to maintain flood insurance on all current and future mortgages starting December 31, 2011. This section will enhance safety and soundness of state-chartered financial institutions by ensuring that assets used to secure loan payments are sufficiently covered in the event that assets are damaged or destroyed by a flooding event. Section 110 updates the maximum allowable civil money penalties per violation that regulators may impose against financial institutions for failing to comply with the provisions of this Act. Section 110 also eliminates the \$100,000 annual cap that regulators may impose on financial institutions to ensure compliance with this Act. Section 111 of this Act requires that all flood insurance payments are escrowed, which in-

asures that flood insurance payments remain current and that assets used to secure loan payments are protected.

This legislation also requires the NFIP to keep and maintain a reserve fund of one percent of total risk exposure. This provision ensures that policyholders' claims will be paid without the assistance of the U.S. Department of Treasury and is also consistent with the goal of working to eliminate some portion of the annual subsidy for the program.

It is expected that the reported bill will have no impact on the personal privacy of the current or prospective flood insurance policyholders. This bill is expected to strengthen the financial status of the NFIP by making rates more actuarially sound and expanding the population purchasing flood insurance. This bill also provides for more equitable treatment between policyholders as well as protecting the U.S. taxpayer from further loss.

CHANGES IN EXISTING LAW (CORDON RULE)

On September 8, 2011, the Committee unanimously approved a motion by Senator Johnson to waive the Cordon rule. Thus, in the opinion of the Committee, it is necessary to dispense with section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

