

Public Law 108-264
108th Congress

An Act

June 30, 2004
[S. 2238]

To amend the National Flood Insurance Act of 1968 to reduce losses to properties for which repetitive flood insurance claim payments have been made.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Bunning-
Bereuter-
Blumenauer
Flood Insurance
Reform Act of
2004.
42 USC 4001
note.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Congressional findings.

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

- Sec. 101. Extension of program and consolidation of authorizations.
- Sec. 102. Establishment of pilot program for mitigation of severe repetitive loss properties.
- Sec. 103. Amendments to existing flood mitigation assistance program.
- Sec. 104. FEMA authority to fund mitigation activities for individual repetitive claims properties.
- Sec. 105. Amendments to additional coverage for compliance with land use and control measures.
- Sec. 106. Actuarial rate properties.
- Sec. 107. Geospatial digital flood hazard data.
- Sec. 108. Replacement of mobile homes on original sites.
- Sec. 109. Reiteration of FEMA responsibility to map mudslides.

TITLE II—MISCELLANEOUS PROVISIONS

- Sec. 201. Definitions.
- Sec. 202. Supplemental forms.
- Sec. 203. Acknowledgement form.
- Sec. 204. Flood insurance claims handbook.
- Sec. 205. Appeal of decisions relating to flood insurance coverage.
- Sec. 206. Study and report on use of cost compliance coverage.
- Sec. 207. Minimum training and education requirements.
- Sec. 208. GAO study and report.
- Sec. 209. Prospective payment of flood insurance premiums.
- Sec. 210. Report on changes to fee schedule or fee payment arrangements.

42 USC 4011
note.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

- (1) the national flood insurance program—
 - (A) identifies the flood risk;
 - (B) provides flood risk information to the public;
 - (C) encourages State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses; and
 - (D) makes flood insurance available on a nationwide basis that would otherwise not be available, to accelerate

TITLE I—AMENDMENTS TO FLOOD INSURANCE ACT OF 1968

SEC. 101. EXTENSION OF PROGRAM AND CONSOLIDATION OF AUTHORIZATIONS.

(a) **BORROWING AUTHORITY.**—The first sentence of section 1309(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4016(a)), is amended by striking “through December” and all that follows through “, and” and inserting “through the date specified in section 1319, and”.

(b) **AUTHORITY FOR CONTRACTS.**—Section 1319 of the National Flood Insurance Act of 1968 (42 U.S.C. 4026), is amended by striking “after” and all that follows and inserting “after September 30, 2008.”.

(c) **EMERGENCY IMPLEMENTATION.**—Section 1336(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4056(a)), is amended by striking “during the period” and all that follows through “in accordance” and inserting “during the period ending on the date specified in section 1319, in accordance”.

(d) **AUTHORIZATION OF APPROPRIATIONS FOR STUDIES.**—Section 1376(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4127(c)), is amended by striking “through” and all that follows and inserting “through the date specified in section 1319, for studies under this title.”.

SEC. 102. ESTABLISHMENT OF PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

(a) **IN GENERAL.**—The National Flood Insurance Act of 1968 is amended by inserting after section 1361 (42 U.S.C. 4102) the following:

42 USC 4102a.

“SEC. 1361A. PILOT PROGRAM FOR MITIGATION OF SEVERE REPETITIVE LOSS PROPERTIES.

“(a) **AUTHORITY.**—To the extent amounts are made available for use under this section, the Director may, subject to the limitations of this section, provide financial assistance to States and communities that decide to participate in the pilot program established under this section for taking actions with respect to severe repetitive loss properties (as such term is defined in subsection (b)) to mitigate flood damage to such properties and losses to the National Flood Insurance Fund from such properties.

“(b) **SEVERE REPETITIVE LOSS PROPERTY.**—For purposes of this section, the term ‘severe repetitive loss property’ has the following meaning:

“(1) **SINGLE-FAMILY PROPERTIES.**—In the case of a property consisting of 1 to 4 residences, such term means a property that—

“(A) is covered under a contract for flood insurance made available under this title; and

“(B) has incurred flood-related damage—

“(i) for which 4 or more separate claims payments have been made under flood insurance coverage under this title, with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or

“(ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the property.

“(2) MULTIFAMILY PROPERTIES.—In the case of a property consisting of 5 or more residences, such term shall have such meaning as the Director shall by regulation provide. Regulations.

“(c) ELIGIBLE ACTIVITIES.—Amounts provided under this section to a State or community may be used only for the following activities:

“(1) MITIGATION ACTIVITIES.—To carry out mitigation activities that reduce flood damages to severe repetitive loss properties, including elevation, relocation, demolition, and floodproofing of structures, and minor physical localized flood control projects, and the demolition and rebuilding of properties to at least Base Flood Elevation or greater, if required by any local ordinance.

“(2) PURCHASE.—To purchase severe repetitive loss properties, subject to subsection (g).

“(d) MATCHING REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in paragraph (2), in any fiscal year the Director may not provide assistance under this section to a State or community in an amount exceeding 3 times the amount that the State or community certifies, as the Director shall require, that the State or community will contribute from non-Federal funds for carrying out the eligible activities to be funded with such assistance amounts.

“(2) REDUCED COMMUNITY MATCH.—With respect to any 1-year period in which assistance is made available under this section, the Director may adjust the contribution required under paragraph (1) by any State, and for the communities located in that State, to not less than 10 percent of the cost of the activities for each severe repetitive loss property for which grant amounts are provided if, for such year—

“(A) the State has an approved State mitigation plan meeting the requirements for hazard mitigation planning under section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5165) that specifies how the State intends to reduce the number of severe repetitive loss properties; and

“(B) the Director determines, after consultation with the State, that the State has taken actions to reduce the number of such properties.

“(3) NON-FEDERAL FUNDS.—For purposes of this subsection, the term ‘non-Federal funds’ includes State or local agency funds, in-kind contributions, any salary paid to staff to carry out the eligible activities of the recipient, the value of the time and services contributed by volunteers to carry out such activities (at a rate determined by the Director), and the value of any donated material or building and the value of any lease on a building.

“(e) NOTICE OF MITIGATION PROGRAM.—

“(1) IN GENERAL.—Upon selecting a State or community to receive assistance under subsection (a) to carry out eligible activities, the Director shall notify the owners of a severe

repetitive loss property, in plain language, within that State or community—

“(A) that their property meets the definition of a severe repetitive loss property under this section;

“(B) that they may receive an offer of assistance under this section;

“(C) of the types of assistance potentially available under this section;

“(D) of the implications of declining such offer of assistance under this section; and

“(E) that there is a right to appeal under this section.

“(2) IDENTIFICATION OF SEVERE REPETITIVE LOSS PROPERTIES.—The Director shall take such steps as are necessary to identify severe repetitive loss properties, and submit that information to the relevant States and communities.

“(f) STANDARDS FOR MITIGATION OFFERS.—The program under this section for providing assistance for eligible activities for severe repetitive loss properties shall be subject to the following limitations:

“(1) PRIORITY.—In determining the properties for which to provide assistance for eligible activities under subsection (c), the Director shall provide assistance for properties in the order that will result in the greatest amount of savings to the National Flood Insurance Fund in the shortest period of time, in a manner consistent with the allocation formula under paragraph (5).

“(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties to take eligible activities under subsection (c) as soon as practicable.

“(3) CONSULTATION.—In determining for which eligible activities under subsection (c) to provide assistance with respect to a severe repetitive loss property, the relevant States and communities shall consult, to the extent practicable, with the owner of the property.

“(4) DEFERENCE TO LOCAL MITIGATION DECISIONS.—The Director shall not, by rule, regulation, or order, establish a priority for funding eligible activities under this section that gives preference to one type or category of eligible activity over any other type or category of eligible activity.

“(5) ALLOCATION.—

“(A) IN GENERAL.—Subject to subparagraphs (B) and (C), of the total amount made available for assistance under this section in any fiscal year, the Director shall allocate assistance to a State, and the communities located within that State, based upon the percentage of the total number of severe repetitive loss properties located within that State.

“(B) REDISTRIBUTION.—Any funds allocated to a State, and the communities within the State, under subparagraph (A) that have not been obligated by the end of each fiscal year shall be redistributed by the Director to other States and communities to carry out eligible activities in accordance with this section.

“(C) EXCEPTION.—Of the total amount made available for assistance under this section in any fiscal year, 10 percent shall be made available to communities that—

“(i) contain one or more severe repetitive loss properties; and

“(ii) are located in States that receive little or no assistance, as determined by the Director, under the allocation formula under subparagraph (A).

“(6) NOTICE.—Upon making an offer to provide assistance with respect to a property for any eligible activity under subsection (c), the State or community shall notify each holder of a recorded interest on the property of such offer and activity.

“(g) PURCHASE OFFERS.—A State or community may take action under subsection (c)(2) to purchase a severe repetitive loss property only if the following requirements are met:

“(1) USE OF PROPERTY.—The State or community enters into an agreement with the Director that provides assurances that the property purchased will be used in a manner that is consistent with the requirements of section 404(b)(2)(B) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(b)(2)(B)) for properties acquired, accepted, or from which a structure will be removed pursuant to a project provided property acquisition and relocation assistance under such section 404(b).

“(2) OFFERS.—The Director shall provide assistance in a manner that permits States and communities to make offers to owners of severe repetitive loss properties and of associated land to engage in eligible activities as soon as possible.

“(3) PURCHASE PRICE.—The amount of purchase offer is not less than the greatest of—

“(A) the amount of the original purchase price of the property, when purchased by the holder of the current policy of flood insurance under this title;

“(B) the total amount owed, at the time the offer to purchase is made, under any loan secured by a recorded interest on the property; and

“(C) an amount equal to the fair market value of the property immediately before the most recent flood event affecting the property, or an amount equal to the current fair market value of the property.

“(4) COMPARABLE HOUSING PAYMENT.—If a purchase offer made under paragraph (2) is less than the cost of the homeowner-occupant to purchase a comparable replacement dwelling outside the flood hazard area in the same community, the Director shall make available an additional relocation payment to the homeowner-occupant to apply to the difference.

“(h) INCREASED PREMIUMS IN CASES OF REFUSAL TO MITIGATE.—

“(1) IN GENERAL.—In any case in which the owner of a severe repetitive loss property refuses an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property, the Director shall—

“(A) notify each holder of a recorded interest on the property of such refusal; and Notification.

“(B) notwithstanding subsections (a) through (c) of section 1308, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time that the offer was made, as adjusted by any other premium adjustments otherwise applicable to the property

and any subsequent increases pursuant to paragraph (2) and subject to the limitation under paragraph (3).

“(2) INCREASED PREMIUMS UPON SUBSEQUENT FLOOD DAMAGE.—Notwithstanding subsections (a) through (c) of section 1308, if the owner of a severe repetitive loss property does not accept an offer to take action under paragraph (1) or (2) of subsection (c) with respect to such property and a claim payment exceeding \$1,500 is made under flood insurance coverage under this title for damage to the property caused by a flood event occurring after such offer is made, thereafter the chargeable premium rate with respect to the property shall be the amount equal to 150 percent of the chargeable rate for the property at the time of such flood event, as adjusted by any other premium adjustments otherwise applicable to the property and any subsequent increases pursuant to this paragraph and subject to the limitation under paragraph (3).

“(3) LIMITATION ON INCREASED PREMIUMS.—In no case may the chargeable premium rate for a severe repetitive loss property be increased pursuant to this subsection to an amount exceeding the applicable estimated risk premium rate for the area (or subdivision thereof) under section 1307(a)(1).

“(4) TREATMENT OF DEDUCTIBLES.—Any increase in chargeable premium rates required under this subsection for a severe repetitive loss property may be carried out, to the extent appropriate, as determined by the Director, by adjusting any deductible charged in connection with flood insurance coverage under this title for the property.

“(5) NOTICE OF CONTINUED OFFER.—Upon each renewal or modification of any flood insurance coverage under this title for a severe repetitive loss property, the Director shall notify the owner that the offer made pursuant to subsection (c) is still open.

“(6) APPEALS.—

“(A) IN GENERAL.—Any owner of a severe repetitive loss property may appeal a determination of the Director to take action under paragraph (1)(B) or (2) with respect to such property, based only upon the following grounds:

“(i) As a result of such action, the owner of the property will not be able to purchase a replacement primary residence of comparable value and that is functionally equivalent.

“(ii) Based on independent information, such as contractor estimates or appraisals, the property owner believes that the price offered for purchasing the property is not an accurate estimation of the value of the property, or the amount of Federal funds offered for mitigation activities, when combined with funds from non-Federal sources, will not cover the actual cost of mitigation.

“(iii) As a result of such action, the preservation or maintenance of any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places will be interfered with, impaired, or disrupted.

“(iv) The flooding that resulted in the flood insurance claims described in subsection (b)(2) for the property resulted from significant actions by a third party in violation of Federal, State, or local law, ordinance, or regulation.

“(v) In purchasing the property, the owner relied upon flood insurance rate maps of the Federal Emergency Management Agency that were current at the time and did not indicate that the property was located in an area having special flood hazards.

“(vi) The owner of the property, based on independent information, such as contractor estimates or other appraisals, demonstrates that an alternative eligible activity under subsection (c) is at least as cost effective as the initial offer of assistance.

“(B) PROCEDURE.—An appeal under this paragraph of a determination of the Director shall be made by filing, with the Director, a request for an appeal within 90 days after receiving notice of such determination. Upon receiving the request, the Director shall select, from a list of independent third parties compiled by the Director for such purpose, a party to hear such appeal. Within 90 days after filing of the request for the appeal, such third party shall review the determination of the Director and shall set aside such determination if the third party determines that the grounds under subparagraph (A) exist. During the pendency of an appeal under this paragraph, the Director shall stay the applicability of the rates established pursuant to paragraph (1)(B) or (2), as applicable. Deadlines.

“(C) EFFECT OF FINAL DETERMINATION.—In an appeal under this paragraph—

“(i) if a final determination is made in favor of the property owner under subparagraph (A) exist, the third party hearing such appeal shall require the Director to reduce the chargeable risk premium rate for flood insurance coverage for the property involved in the appeal from the amount required under paragraph (1)(B) or (2) to the amount paid prior to the offer to take action under paragraph (1) or (2) of subsection (c); and

“(ii) if a final determination is made that the grounds under subparagraph (A) do not exist, the Director shall promptly increase the chargeable risk premium rate for such property to the amount established pursuant to paragraph (1)(B) or (2), as applicable, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates during the pendency of the appeal.

“(D) COSTS.—If the third party hearing an appeal under this paragraph is compensated for such service, the costs of such compensation shall be borne—

“(i) by the owner of the property requesting the appeal, if the final determination in the appeal is that the grounds under subparagraph (A) do not exist; and

- “(ii) by the National Flood Insurance Fund, if such final determination is that the grounds under subparagraph (A) do exist.
- Deadline. “(E) REPORT.—Not later than 6 months after the date of the enactment of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, the Director shall submit a report describing the rules, procedures, and administration for appeals under this paragraph to—
- “ (i) the Committee on Banking, Housing, and Urban Affairs of the Senate; and
- “ (ii) the Committee on Financial Services of the House of Representatives.
- “(i) DISCRETIONARY ACTIONS IN CASES OF FRAUDULENT CLAIMS.—If the Director determines that a fraudulent claim was made under flood insurance coverage under this title for a severe repetitive loss property, the Director may—
- “ (1) cancel the policy and deny the provision to such policyholder of any new flood insurance coverage under this title for the property; or
- “ (2) refuse to renew the policy with such policyholder upon expiration and deny the provision of any new flood insurance coverage under this title to such policyholder for the property.
- “(j) RULES.—
- “ (1) IN GENERAL.—The Director shall, by rule—
- “ (A) subject to subsection (f)(4), develop procedures for the distribution of funds to States and communities to carry out eligible activities under this section; and
- “ (B) ensure that the procedures developed under paragraph (1)—
- “ (i) require the Director to notify States and communities of the availability of funding under this section, and that participation in the pilot program under this section is optional;
- “ (ii) provide that the Director may assist States and communities in identifying severe repetitive loss properties within States or communities;
- “ (iii) allow each State and community to select properties to be the subject of eligible activities, and the appropriate eligible activity to be performed with respect to each severe repetitive loss property; and
- “ (iv) require each State or community to submit a list of severe repetitive loss properties to the Director that the State or community would like to be the subject of eligible activities under this section.
- Deadline. “(2) CONSULTATION.—Not later than 90 days after the date of enactment of this Act, the Director shall consult with State and local officials in carrying out paragraph (1)(A), and provide an opportunity for an oral presentation, on the record, of data and arguments from such officials.
- “(k) FUNDING.—
- “ (1) IN GENERAL.—Pursuant to section 1310(a)(8), the Director may use amounts from the National Flood Insurance Fund to provide assistance under this section in each of fiscal years 2005, 2006, 2007, 2008, and 2009, except that the amount so used in each such fiscal year may not exceed \$40,000,000 and shall remain available until expended. Notwithstanding

any other provision of this title, amounts made available pursuant to this subsection shall not be subject to offsetting collections through premium rates for flood insurance coverage under this title.

“(2) ADMINISTRATIVE EXPENSES.—Of the amounts made available under this subsection, the Director may use up to 5 percent for expenses associated with the administration of this section.

“(1) TERMINATION.—The Director may not provide assistance under this section to any State or community after September 30, 2009.”

(b) AVAILABILITY OF NATIONAL FLOOD INSURANCE FUND AMOUNTS.—Section 1310(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4017(a)) is amended—

(1) in paragraph (7), by striking “and” at the end; and

(2) by striking paragraph (8) and inserting the following:

“(8) for financial assistance under section 1361A to States and communities for taking actions under such section with respect to severe repetitive loss properties, but only to the extent provided in section 1361A(i); and”.

SEC. 103. AMENDMENTS TO EXISTING FLOOD MITIGATION ASSISTANCE PROGRAM.

(a) STANDARD FOR APPROVAL OF MITIGATION PLANS.—Section 1366(e)(3) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following new sentence: “The Director may approve only mitigation plans that give priority for funding to such properties, or to such subsets of properties, as are in the best interest of the National Flood Insurance Fund.”

(b) PRIORITY FOR MITIGATION ASSISTANCE.—Section 1366(e) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by striking paragraph (4) and inserting the following:

“(4) PRIORITY FOR MITIGATION ASSISTANCE.—In providing grants under this subsection for mitigation activities, the Director shall give first priority for funding to such properties, or to such subsets of such properties as the Director may establish, that the Director determines are in the best interests of the National Flood Insurance Fund and for which matching amounts under subsection (f) are available.”

(c) COORDINATION WITH STATES AND COMMUNITIES.—Section 1366 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104c) is amended by adding at the end the following:

“(m) COORDINATION WITH STATES AND COMMUNITIES.—The Director shall, in consultation and coordination with States and communities take such actions as are appropriate to encourage and improve participation in the national flood insurance program of owners of properties, including owners of properties that are not located in areas having special flood hazards (the 100-year floodplain), but are located within flood prone areas.”

(d) FUNDING.—Section 1367 of the National Flood Insurance Act of 1968 (42 U.S.C. 4104d) is amended—

(1) in subsection (b), by striking paragraph (1) and inserting the following:

“(1) in each fiscal year, amounts from the National Flood Insurance Fund not exceeding \$40,000,000, to remain available until expended;”;