

MULTIPLE PERIL INSURANCE ACT OF 2009

JULY 19, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1264]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1264) to amend the National Flood Insurance Act of 1968 to provide for the national flood insurance program to make available multiperil coverage for damage resulting from windstorms or floods, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1264, the Multiple Peril Insurance Act of 2009, would amend the National Flood Insurance Act to create a public option for property owners to purchase flood and wind coverage in one policy. Through the National Flood Insurance Program, property owners will have access to a public option to buy windstorm insurance and know that hurricane and tropical storm losses will be covered without delays, disputes, and lawsuits over what damage was caused by flooding and what damage was caused by wind. The new public option would be available only where local governments opt in and adopt International Building Codes or the equivalent.

BACKGROUND AND NEED FOR LEGISLATION

In the aftermath of and in light of his personal experiences following Hurricane Katrina, Representative Gene Taylor of Mississippi originally introduced the Multiple Peril Insurance Act in the 110th Congress as H.R. 920. The text of the Multiple Peril Insurance Act passed the House on September 27, 2007 as part of larger flood insurance program reform legislation, the Flood Insurance Reform and Modernization Act of 2007 (H.R. 3121). Legislative text substantially similar to the provisions of H.R. 920 was introduced in the Senate by Senator Roger Wicker as an amendment to S. 2284, the Flood Insurance Reform and Modernization Act of 2007. The amendment failed by a vote of 19 to 74 during consideration of S. 2284. Rep. Taylor reintroduced a substantially similar bill on March 3, 2009 as H.R. 1264. Both the Bush and Obama Administrations have expressed opposition to the Multiple Peril Insurance Act throughout its legislative history.¹ Additional background information regarding multiple peril determination issues is available in two comprehensive reports prepared by the Government Accountability Office.²

By eliminating gaps in insurance coverage and eliminating the delays and disputes over wind or flood damage, the new public insurance option created by the Multiple Peril Insurance Act is intended to reduce future disaster assistance costs after hurricanes. After Hurricane Katrina, the federal government spent more than \$34 billion on rental assistance, vouchers, trailers and other manufactured housing, grants to homeowners, and Small Business Administration disaster loans to homeowners. A portion of those costs may have been avoided were a public option available to allow property owners to purchase insurance that provided seamless coverage of hurricane losses that would have paid claims promptly and in full.

¹For the Bush Administration's opposition, see, <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr3121sap-r.pdf>; for the Obama Administration's opposition, see, http://www.reinsurance.org/files/public/060209_review_1.pdf.

²For the two GAO reports, see, "Natural Catastrophe Insurance: Analysis of a Proposed Combined Federal Flood and Wind Insurance Program" at <http://www.gao.gov/new.items/d08504.pdf>; and "National Flood Insurance Program: Greater Transparency and Oversight of Wind and Flood Damage Determinations Are Needed" at <http://www.gao.gov/new.items/d0828.pdf>.

The Multiple Peril Insurance Act is also intended to create a more stable and efficient, public option for insurance in coastal areas. The Multiple Peril Insurance Act is also intended to reallocate resources and spread coastal wind and flood risk geographically so that a small portion of policies would be affected by a single event. Currently, the private insurance marketplace forces each coastal state to operate its own wind pool that would have to pay on a substantial proportion of policies from a single event. None of the single-state pools is capable of building up sufficient reserves to cover a major hurricane making a direct hit on a large population center. The public option created by the Multiple Peril Insurance Act would free the states of these private market forces and allocate risk and resources among multiple states through a Federal umbrella. The bill requires premiums for the new, public, optional coverage to be risk-based and actuarially sound, so that the program would be required to collect enough premiums to pay claims.

Multiple peril policies would be available where local governments agree to adopt and enforce building codes and standards designed and determined by FEMA to minimize wind damage, in addition to the existing Federal flood program requirements for flood plain management. Any community participating in the public flood insurance program could opt into the multiple peril, public insurance option, but the greatest demand for the optional coverage product will be in coastal areas that face both flood and wind risk from hurricanes and tropical storms.

The Multiple Peril Insurance Act would allow homeowners to buy insurance and know that their damage from both wind and water will be covered. This is primarily a concern after a hurricane where the worst destruction is typically caused by a combination of wind and flooding. Homeowners would not have to hire lawyers, engineers, and adjusters to determine what damage was caused by wind and what was caused by flooding.

This bill would set residential policy limits at \$500,000 for the structure and \$150,000 for contents and loss of use. Nonresidential properties could be covered to \$1,000,000 for structure and \$750,000 for contents and business interruption.

Once the new optional coverage program is enacted, it is hoped that, unlike what has happened after 40 years of the National Flood Insurance Program, a private insurance market would develop to offer coverage above the limits. This would allow insurance companies to design policies that would have the equivalent of a \$500,000 deductible for residential properties or a \$1 million deductible for nonresidential properties.

HEARINGS

The Subcommittee on Housing and Community Development held a hearing entitled “Legislative Proposals to Reform the National Flood Insurance Program” on April 21, 2010. At the hearing, the following witnesses testified:

- The Honorable Jerry Costello, Member of Congress
- The Honorable Doris Matsui, Member of Congress
- The Honorable Steve Scalise, Member of Congress
- The Honorable Gene Taylor, Member of Congress

- The Honorable Craig Fugate, Administrator, Federal Emergency Management Administration
- Ms. Orice Williams Brown, Director, Financial Markets and Community Investment, U.S. Government Accountability Office
- Mr. David R. Conrad, Senior Water Resources Specialist, National Wildlife Federation
- Mr. Mark Davey, President and Chief Executive Officer, Fidelity National Financial Specialty Insurance Group, on behalf of the Write Your Own Coalition
- Mr. Larry Larson, Executive Director, Association of State Flood Plain Managers
- Mr. John Rollins, President, Rollins Analytics, Inc.
- Mr. Barry Rutenberg, Second Vice Chairman of the Board, National Association of Homebuilders
- Mr. Maurice “Moe” Veissi, Veissi & Associates, First Vice President, National Association of REALTORS

In the 110th Congress, the Subcommittee on Housing and Community Opportunity held a legislative hearing entitled “H.R. 920, the Multiple Peril Insurance Act of 2007” on July 17, 2007. At the hearing, the following witnesses testified:

- The Honorable Richard H. Baker, Member of Congress
- The Honorable Gene Taylor, Member of Congress
- The Honorable Charlie Melancon, Member of Congress
- The Honorable Bobby Jindal, Member of Congress
- Mr. David I. Maurstad, Assistant Administrator for Mitigation, Federal Emergency Management Agency
- Ms. Pam Pogue, Vice Chair, Association of State Floodplain Managers
- Ms. Sandy Praeger, Commissioner, Kansas Insurance Department, on behalf of the National Association of Insurance Commissioners
- Mr. Ted A. Majewski, Senior Vice President, Harleysville Insurance, on behalf of the Property Casualty Insurers, American Insurance Association, and National Association of Mutual Insurance Companies
- Ms. Cheryl Small, Policy Advisor, National Flood Determination Association
- Mr. Mark Cumbest, President, Cumbest Realty
- Mr. W. Anderson Baker, III, CPCU, ARM, Gillis, Ellis & Baker Inc
- Dr. Robert P. Hartwig, Ph.D., CPCU, President and Chief Economist, Insurance Information Institute
- Mr. David Conrad, Senior Water Resources Specialist, National Wildlife Federation

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 27, 2010, and ordered H.R. 1264, Multiple Peril Insurance Act of 2009, favorably reported to the House by a record vote of 40 yeas and 25 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill to the House with a favorable recommendation was agreed to by a record vote of 40 yeas and 25 nays (Record vote no. FC-116). The names of Members voting for and against follow:

RECORD VOTE NO. FC-116

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)		X	
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez				Mr. Lucas		X	
Ms. Velázquez	X			Mr. Paul		X	
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones	X		
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)		X	
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling			
Mr. Hinojosa	X			Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)			
Mrs. McCarthy	X			Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch	X			Mr. Price (GA)			
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell		X	
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann		X	
Ms. Bean	X			Mr. Marchant		X	
Ms. Moore (WI)				Mr. McCotter		X	
Mr. Hodes				Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter	X			Mr. Paulsen		X	
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster	X						
Mr. Carson	X						
Ms. Speier	X						
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

No amendments were offered or considered during the Committee's consideration of the bill.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 1264 amends the National Flood Insurance Act to create a public option for property owners to purchase flood and wind coverage in one policy. Property owners will have access to a public option to buy windstorm insurance and know that hurricane and tropical storm losses will be covered without delays, disputes, and law suits over what damage was caused by flooding and what damage was caused by wind.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JULY 19, 2010.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1264, the Multiple Peril Insurance Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1264—Multiple Peril Insurance Act of 2009

H.R. 1264 would expand the National Flood Insurance Program (NFIP) to offer coverage for wind damage to property owners located in certain communities. Coverage would be offered at a premium sufficient to cover the future expected cost of that coverage. Enacting H.R. 1264 would affect direct spending; therefore, pay-as-you-go procedures would apply to the legislation. However, CBO estimates that enacting H.R. 1264 would have no significant impact

on the federal budget for each year and no net effect over the next 10 years.

H.R. 1264 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The legislation would authorize the NFIP to sell two new types of insurance policies to residential and nonresidential properties owners—multiperil and windstorm. Multiperil policies would cover property damage resulting from flood or wind. Windstorm policies would cover property damage resulting from wind only. Both lines of coverage would be available for properties located in communities that have adopted wind mitigation measures consistent with international building codes. Windstorm coverage would only be available for properties also insured by a separate NFIP flood policy. (While properties covered by separate flood and windstorm policies would be insured by the program for the same events as those covered by a multiperil policy, the aggregate premium offered to the property owner could differ due to existing subsidies for some flood insurance policies.)

H.R. 1264 would direct the NFIP to charge actuarial (that is, unsubsidized) premiums for new multiperil and windstorm policies. The timing and magnitude of future claims payments cannot be forecast with certainty because of the nature of actuarial pricing and the uncertainty about when damages might occur that would result in claims. The NFIP might collect aggregate premiums that are above or below amounts necessary to pay expenses in a given year (particularly if a major event were to occur soon after enactment of the legislation) and over time¹ In years that the program collects more premiums than necessary to meet ongoing costs, the NFIP would record a surplus (recorded in the budget as a net reduction in direct spending). In years of insufficient premium collection, the program would draw upon its reserves or available borrowing authority from the Treasury (recorded in the budget as an increase in direct spending).²

For this estimate, CBO assumes that actuarially based premiums calculated by the NFIP would generate a sufficient amount to cover future costs. As such, increased claims payments made by the program would be roughly offset by additional premiums, resulting in no net change to direct spending.

The CBO staff contact for this estimate is Daniel Hoople. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

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

² As of July 2010, the NFIP had \$18.8 billion in outstanding debt to the Treasury. Under current law, the program may borrow up to \$20.7 billion. CBO estimates that remaining borrowing authority (about \$2 billion) will be exhausted by the end of fiscal year 2013.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1264 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act may be cited as the “Multiple Peril Insurance Act of 2009”.

Sec. 2—Coverage for windstorms

This section would create a program within the NFIP that would provide optional multiple peril coverage for physical damage from floods or windstorms, or optional windstorm coverage for physical damage from windstorms. Duplicative multiple peril and flood insurance coverage is prohibited. Windstorm coverage will only be provided to those structures that already have flood insurance. Coverage shall be made available only at chargeable risk premium rates that are required in order to make such coverage available on an actuarial basis for the type and class of properties covered.

The FEMA Director shall provide by regulation the general terms and conditions of insurability applicable to properties eligible for multiple peril and windstorm coverage. For multiple peril policies, residential policy limits would be set at \$500,000 for the structure and \$150,000 for contents and loss of use. Nonresidential properties could be covered to \$1,000,000 for structure and \$750,000 for contents and business interruption. For separate windstorm policies, regulations will provide that coverage shall not exceed the amount such that the aggregate liability under flood insurance and windstorm coverage does not exceed the coverage limit applicable to multiple peril coverage. This section becomes effective six months after enactment.

Sec. 3—Prohibition against duplicative coverage

This section provides that flood insurance may not be provided to any structure if that structure is covered by multiple peril insurance.

Sec. 4—Compliance with State and local law

This section provides that no new multiple peril coverage shall be provided for any property that has been declared by a State or local zoning authority to be in violation of State or local laws, regulations, or ordinances, which are intended to reduce damage caused by windstorms.

Sec. 5—Criteria for land management and use

This section directs FEMA to carry out studies to determine appropriate measures in wind events as to wind hazard prevention. FEMA is directed to encourage the adoption and application of any measures identified.

Sec. 6—Definitions

Windstorms are defined as any hurricane, tornado, cyclone, typhoon, or other wind event.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL FLOOD INSURANCE ACT OF 1968

TITLE XIII—NATIONAL FLOOD INSURANCE

SHORT TITLE

SEC. 1301. This title may be cited as the “National Flood Insurance Act of 1968”.

* * * * *

CHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

BASIC AUTHORITY

SEC. 1304. (a) * * *

* * * * *

(c) *MULTIPERIL COVERAGE FOR DAMAGE FROM FLOOD OR WINDSTORM AND SEPARATE COVERAGE FOR WINDSTORM.*—

(1) *IN GENERAL.*—*The national flood insurance program established pursuant to subsection (a) shall enable the purchase of the following coverages:*

(A) *MULTIPERIL COVERAGE.*—*Optional insurance against loss resulting from physical damage to or loss of real property or personal property related thereto located in the United States arising from any flood or windstorm, subject*

to the limitations in this subsection and section 1306(b); and

(B) *SEPARATE WINDSTORM COVERAGE.*—Optional insurance against loss resulting from physical damage to or loss of real property or personal property related thereto located in the United States arising from any windstorm, subject to the limitations in this subsection and section 1306(b).

(2) *COMMUNITY PARTICIPATION REQUIREMENT.*—Multiperil coverage pursuant to paragraph (1)(A) and windstorm coverage pursuant to paragraph (1)(B) may not be provided in any area (or subdivision thereof) unless an appropriate public body shall have adopted adequate mitigation measures (with effective enforcement provisions) which the Director finds are consistent with the criteria for construction described in the International Code Council building codes relating to wind mitigation.

(3) *RELATIONSHIP TO FLOOD INSURANCE COVERAGE.*—

(A) *PROHIBITION AGAINST DUPLICATIVE COVERAGE.*—Multiperil coverage pursuant to paragraph (1)(A) may not be provided with respect to any structure (or the personal property related thereto) for any period during which such structure is covered, at any time, by flood insurance coverage made available under this title.

(B) *REQUIREMENT TO MAINTAIN FLOOD INSURANCE COVERAGE.*—Windstorm coverage pursuant to paragraph (1)(B) may be provided only with respect to a structure (and the personal property related thereto) that is covered by flood insurance coverage made available under this title and only during the period that such structure (and personal property) are so covered.

(4) *NATURE OF COVERAGE.*—

(A) *MULTIPERIL COVERAGE.*—Multiperil coverage pursuant to paragraph (1)(A) shall—

(i) cover losses only from physical damage resulting from flooding or windstorm; and

(ii) provide for approval and payment of claims under such coverage upon proof that such loss must have resulted from either windstorm or flooding, but shall not require for approval and payment of a claim that the specific cause of the loss, whether windstorm or flooding, be distinguished or identified.

(B) *SEPARATE WINDSTORM COVERAGE.*—Windstorm coverage pursuant to paragraph (1)(B) shall—

(i) cover losses only from physical damage resulting from windstorm; and

(ii) provide for approval and payment of claims under such coverage or under the flood insurance coverage required to be maintained under paragraph (3)(B) upon a determination that such loss is from windstorm or flooding, respectively, but shall not require for approval and payment of a claim that the insured distinguish or identify the specific cause of the loss, whether windstorm or flooding.

(5) *ACTUARIAL RATES.*—Multiperil coverage pursuant to paragraph (1)(A) and windstorm coverage pursuant to paragraph (1)(B) shall be made available for purchase for a property only

at chargeable risk premium rates that, based on consideration of the risks involved and accepted actuarial principles, and including operating costs and allowance and administrative expenses, are required in order to make such coverage available on an actuarial basis for the type and class of properties covered.

(6) *TERMS OF COVERAGE.*—The Director shall, after consultation with persons and entities referred to in section 1306(a), provide by regulation for the general terms and conditions of insurability applicable to properties eligible for multiperil coverage pursuant to paragraph (1)(A) and such terms and conditions applicable to properties eligible for windstorm coverage pursuant to paragraph (1)(B), subject to the provisions of this subsection, including—

(A) the types, classes, and locations of any such properties which shall be eligible for such coverages, which shall include residential and nonresidential properties;

(B) subject to paragraph (7), the nature and limits of loss or damage in any areas (or subdivisions thereof) which may be covered by such coverages;

(C) the classification, limitation, and rejection of any risks which may be advisable;

(D) appropriate minimum premiums;

(E) appropriate loss deductibles; and

(F) any other terms and conditions relating to insurance coverage or exclusion that may be necessary to carry out this subsection.

(7) *LIMITATIONS ON AMOUNT OF COVERAGE.*—

(A) *MULTIPERIL COVERAGE.*—The regulations issued pursuant to paragraph (6) shall provide that the aggregate liability under multiperil coverage made available under this subsection shall not exceed the lesser of the replacement cost for covered losses or the following amounts, as applicable:

(i) *RESIDENTIAL STRUCTURES.*—In the case of residential properties, which shall include structures containing multiple dwelling units that are made available for occupancy by rental (notwithstanding any treatment or classification of such properties for purposes of section 1306(b))—

(I) for any single-family dwelling, \$500,000;

(II) for any structure containing more than one dwelling unit, \$500,000 for each separate dwelling unit in the structure, which limit, in the case of such a structure containing multiple dwelling units that are made available for occupancy by rental, shall be applied so as to enable any insured or applicant for insurance to receive coverage for the structure up to a total amount that is equal to the product of the total number of such rental dwelling units in such property and the maximum coverage limit per dwelling unit specified in this clause; and

(III) \$150,000 per dwelling unit for—

(aa) any contents related to such unit; and

(bb) any necessary increases in living expenses incurred by the insured when losses from flooding or windstorm make the residence unfit to live in.

(ii) NONRESIDENTIAL PROPERTIES.—In the case of nonresidential properties (including church properties)—

(I) \$1,000,000 for any single structure; and

(II) \$750,000 for—

(aa) any contents related to such structure; and

(bb) in the case of any nonresidential property that is a business property, any losses resulting from any partial or total interruption of the insured's business caused by damage to, or loss of, such property from flooding or windstorm, except that for purposes of such coverage, losses shall be determined based on the profits the covered business would have earned, based on previous financial records, had the flood or windstorm not occurred.

(B) SEPARATE WINDSTORM COVERAGE.—The regulations issued pursuant to paragraph (6) shall provide that windstorm coverage pursuant to paragraph (1)(B) for a property shall not exceed the amount such that the aggregate liability under flood insurance coverage required to be maintained under paragraph (3)(B) for the property and such windstorm coverage for the property does not exceed the applicable coverage limit for the property set forth in subparagraph (A) of this paragraph.

(8) EFFECTIVE DATE.—This subsection shall take effect on, and shall apply beginning on, the expiration of the 6-month period that begins on the date of the enactment of the Multiple Peril Insurance Act of 2009.

[(c)] (d) In carrying out the flood insurance program the Director shall, to the maximum extent practicable, encourage and arrange for—

(1) * * *

* * * * *

PROHIBITION AGAINST DUPLICATIVE COVERAGE

SEC. 1314. Flood insurance under this title may not be provided with respect to any structure (or the personal property related thereto) for any period during which such structure is covered, at any time, by multiperil insurance coverage made available pursuant to section 1304(c)(1)(A).

* * * * *

PROPERTIES IN VIOLATION OF STATE AND LOCAL LAW

SEC. 1316. (a) FLOOD PROTECTION MEASURES.—No new flood insurance coverage shall be provided under this title for any property which the Director finds has been declared by a duly constituted State or local zoning authority, or other authorized public body, to be in violation of State or local laws, regulations or ordinances

which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

(b) *WINDSTORM PROTECTION MEASURES.*—No new multiperil coverage shall be provided under section 1304(c) for any property that the Director finds has been declared by a duly constituted State or local zoning authority, or other authorized public body to be in violation of State or local laws, regulations, or ordinances, which are intended to reduce damage caused by windstorms.

* * * * *

CHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

* * * * *

CRITERIA FOR LAND MANAGEMENT AND USE

SEC. 1361. (a) * * *

* * * * *

(d) *WINDSTORMS.*—

(1) *STUDIES AND INVESTIGATIONS.*—The Director shall carry out studies and investigations under this section to determine appropriate measures in wind events as to wind hazard prevention, and may enter into contracts, agreements, and other appropriate arrangements to carry out such activities. Such studies and investigations shall include laws, regulations, and ordinance relating to the orderly development and use of areas subject to damage from windstorm risks, and zoning building codes, building permits, and subdivision and other building restrictions for such areas.

(2) *COORDINATION WITH STATE AND LOCAL GOVERNMENTS.*—The Director shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of measures identified pursuant to paragraph (1) and the adoption and enforcement of such measures.

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CHAPTER IV—APPROPRIATIONS AND MISCELLANEOUS PROVISIONS

DEFINITIONS

SEC. 1370. (a) * * *

* * * * *

(14) the term “servicer” means the person responsible for receiving any scheduled periodic payments from a borrower pursuant to the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan; [and]

(15) the term “substantially damaged structure” means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified

in any regulation promulgated by the Director, or by a community ordinance, whichever is lower **[.1]**; and
(16) the term "windstorm" means any hurricane, tornado, cyclone, typhoon, or other wind event.

* * * * *

DISSENTING VIEWS

H.R. 1264, the Multiple Peril Insurance Act of 2009, proposes to expand the federal government's role in the private insurance market by creating a massive new program to offer government-provided coverage backed by taxpayer dollars against property losses from hurricanes that could shift enormous costs onto American taxpayers. This unwarranted and ill-advised legislation would amend the National Flood Insurance Act of 1968, which created the National Flood Insurance Program (NFIP), by adding windstorm insurance to the scope of insurance coverage offered by the federal government, obligating it to pay potentially billions of dollars in property damage claims resulting from windstorms in addition to flooding.

We strongly oppose the expansion of the National Flood Insurance Program to include windstorm damage. Transferring these liabilities from the private sector to the NFIP would be fiscally irresponsible. Federal government insurance would supplant insurance that is already provided by the private market. Expansion of the NFIP would also undermine economic incentives to mitigate risks because the program would likely distort rates from their market-determined values. Individuals would be encouraged to take on risks that are imprudent, putting themselves in harm's way because they would not have to bear the full costs of any subsequent damages. Finally, the inclusion of windstorm damage insurance in the NFIP would mean that all taxpayers would be subsidizing insurance rates for the benefit of those people in high-risk areas.

The NFIP currently owes the U.S. Treasury \$18.75 billion, the amount it has been forced to borrow from taxpayers to pay claims and expenses in excess of premiums collected. Since 2006, the Government Accountability Office (GAO) has included the NFIP on its list of "high-risk" federal government programs in need of comprehensive reforms. By its own account, the NFIP will likely never be able to repay its debt to taxpayers. For this reason alone, H.R. 1264 is unworthy of support.

It is our view that fundamental reform of the National Flood Insurance Program should be the priority of this Congress, including the removal of subsidies over time to improve the long-term solvency of the program. In contrast, H.R. 1264 would dramatically increase the scope of the NFIP at a time when the program is essentially insolvent and remains grossly underfunded.

During the recent debate on H.R. 5114, the Flood Insurance Priorities Act of 2010, which passed the House on July 15th, there was bipartisan consensus on the need for major reform of the NFIP. As approved by the House, H.R. 5114 would phase out several categories of subsidies, but many Republicans believed the reforms did not go far enough to put the program on a solid path to self-sufficiency. We reiterate that the chief objective for this Con-

gress should be achieving fundamental reform of the current flood insurance program, rather than embarking on a massive expansion by the federal government into the wind insurance business.

We are convinced that H.R. 1264 represents a poor public policy choice for America, even if the NFIP were able to pay back its debt and function as a self-sustaining program. If H.R. 1264 were enacted, for example, it could result in significant adverse selection for the multiple-peril program. Because wind is a standard component of most private homeowners' insurance policies, the initial demand for government-backed wind coverage would most likely be concentrated in regions where the risk of windstorm damage is the greatest. As a result, if there was another large hurricane or storm that caused both flood and wind losses, the cost to taxpayers would be enormous and the NFIP's debt would increase exponentially.

Obama Administration officials have echoed these concerns. Last year, Secretary of Homeland Security Janet Napolitano, wrote to Chairman Frank stating the Administration's opposition to the expansion of the NFIP contemplated by H.R. 1264:

The Administration strongly opposes the provision in the House bill establishing insurance coverage for multiple perils. The Administration objects to this coverage for a number of reasons. Coverage is available in the private sector and through state wind pools. Property owners are served by the private market, which provides catastrophic windstorm coverage without the need for Federal aid. The Administration, opposes extending the Federal Government's role and increasing its liability for an insurance program that is readily available in the private sector and through state insurance plans . . . Wind coverage would greatly increase the NFIP's exposure to catastrophic risks at a time when the program has a growing debt and accrued interest of over \$19 billion . . .

More recently, in testimony before the Subcommittee on Housing and Community Opportunity on April 21, 2010, the top Administration official responsible for our nation's emergency preparedness and management of major catastrophic events such as floods and hurricanes reiterated the Administration's strong opposition to H.R. 1264. In the words of Craig Fugate, Administrator of the Federal Emergency Management Agency:

We are concerned that under a multi-peril Federal program, the liability for multi-peril insurance, which is currently absorbed by the private property insurance market, would be transferred to the U.S. Treasury and, ultimately, to the American taxpayer. Notwithstanding the bill's language, a Federal program will face pressures to set aside risk-based pricing and offer subsidized government insurance. If it lowered insurance prices below the actuarially-fair value, a Federal program would encourage people to take on more risk than if they faced the full expected costs of damages. In addition to the riskier behavior, Federal Government participation in the wind insurance market would displace private markets, and mandate an unfair cross-subsidy burden on taxpayers.

At that same hearing, a representative of the Association of State Flood Plain Managers (ASFPM), the nationwide network of state and local officials who manage activities in floodplains to protect our communities against natural disasters, also criticized H.R. 1264:

The ASFPM has testified in the past to voice its strong opposition to proposals that would add the unknown exposure of an optional wind and flood policy to the NFIP. While intended to benefit the narrow strip of properties subject to both hurricane storm surge and wind damage, this proposed policy change could conceivably result in coverage of a property in a flood zone that was destroyed by winds elsewhere in the nation. While it is true that many Americans live in coastal counties, relatively few of those are subject to both storm surge and wind damage, so this concept would involve a major cross subsidy of a small group at risk of both wind and flood damage by policy holders throughout the nation.

While Congress should examine market-based initiatives to encourage more competitive markets for private property insurance in high-risk areas, it would be fiscally irresponsible to force the NFIP to take on new risks for wind insurance, as it could expose taxpayers to further losses and add billions of dollars to the Federal budget deficit. Accordingly, we join the Obama Administration in strongly opposing H.R. 1264.

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