

## *Risk Analysis and Communication*

**4. Risk-Informed Approach for a Modern NFIP** – Simplifies and clarifies FEMA’s mapping authority and provides the flexibility to produce regulatory maps and non-regulatory flood hazard and flood risk information products to enhance the nation’s understanding of flood risk that include future climate projections.

### Legislative text:

#### **Section \_\_\_: Risk Informed Approach for an Informed National Flood Insurance Program.**

- (a) Section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) is repealed.
- (b) Section 100215 of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4101a) is amended—
  - (1) in subsection (b)(1)(E)—
    - (A) by striking the number 16 and replacing it with the number 17.
    - (B) in clause (viii), by inserting the words “United States Army” before the words “Corps of Engineers”;
    - (C) in clause (x), by striking the words “flood insurance rate maps” and replacing them with the words “flood hazard and flood risk information;”;
    - (D) in clause (xi), by striking the words “flood insurance rate maps” and replacing them with the words “flood hazard and flood risk information;”;
    - (E) in clause, by striking the word “and” at the end;
    - (F) in clause (xiv), by adding at the end of the word “and”; and
    - (G) by adding at the end the following: “(xv) a member of a recognized professional real estate brokerage association.”
  - (2) in subsection (b)(2), by striking “flood insurance rate maps” and inserting “flood hazard and flood risk information;”;
  - (3) in subsection (c)(1)—
    - (A) in subparagraph (A), by striking “insurance rate maps and risk data” and inserting “hazard and flood risk information”; and
    - (B) in subparagraph (B), by striking “map” and inserting “identify flood hazard and”;
  - (4) in subsection (c)—
    - (A) in paragraph (2)(A), by striking “flood insurance rate maps” and inserting “collecting and maintaining flood hazard and flood risk information, including but not limited to flood hazard determinations”;
    - (B) in paragraph (3), by striking “insurance rate maps and flood risk identification” and inserting “hazard and flood risk information.”;
    - (C) in paragraph (4), by striking both instances of the word “mapping” and inserting “flood hazard and flood risk identification.”;
    - (D) in paragraph (5)(A), by striking “mapping and flood risk determination” and inserting “and flood risk identification.”;
    - (E) by redesignating paragraph (6) as paragraph (7) inserting in lieu thereof:  
“(6) provide recommendations in response to specific requests presented to the Council by the Administrator, and”;
    - (G) in paragraph (7)(B) (as redesignated), by striking “insurance rate maps and mapping” and inserting “hazard and flood risk identification”; and
    - (H) in paragraph (7)(B) (as redesignated), by striking “flood insurance rate maps” and inserting “such products”;
  - (5) in subsection (d)—
    - (A) in paragraph (1)(A)(i)—
      - (i) by striking “insurance rate maps” and inserting “hazard and flood risk information”; and
      - (ii) by striking “incorporate” and inserting “incorporates”;

- (6) in subsection (d)(2), by striking “National Flood Insurance Program rate maps” and inserting “flood hazard and flood risk information”; and
- (7) in subsection (l)(2), by striking “flood insurance rate maps and flood risk data” and inserting “flood hazard and flood risk information including flood hazard determinations”.

(c) The Biggert Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4101b) is amended by striking section 100216 and inserting in lieu thereof the following:

**Sec. 100216. National Flood Hazard and Flood Risk Identification Program (42 U.S.C. 4101b)**

“(a) Reviewing, updating, and maintaining flood hazard and flood risk information.— To further enhance the nation’s understanding of flood related risk, and to facilitate the identification of areas having special flood hazard as authorized by this section and Section 1361 of P.L.90-448, the Administrator, in coordination with the Technical Mapping Advisory Council established under section 4101a of this title, shall establish an ongoing program under which the Administrator shall review, update, and maintain flood hazard and flood risk information in accordance with this section.

“(b) Flood Hazard and Flood Risk Identification.

“(1) Authority of the Administrator; grants, technical assistance, acquisition of data and use of other agency data.—In carrying out the program established under subsection (a), the Administrator—

“(A) is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms;

“(B) is authorized, without regard to subsections (a) and (b) of section 3324 of title 31 and section 6101 of title 41, to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms deemed appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.

“(C) wherever necessary, is authorized to acquire new ground elevation data utilizing the most up-to-date methods and technologies in accordance with guidelines and specifications of the Federal Emergency Management Agency

“(D) shall leverage where applicable—

“(i) any relevant information, including information on coastal inundation, from--

“(I) the United States Army Corps of Engineers; and

“(II) the National Oceanic and Atmospheric Administration, including information relating to storm surge modeling;

“(ii) any relevant information of the United States Geological Survey on stream flows, watershed characteristics, and topography that is useful in the identification of flood hazard areas, as determined by the Administrator;

“(iii) any relevant information on land subsidence, coastal erosion areas, changing lake levels, and other flood-related hazards;

“(iv) any relevant information or data of the National Oceanic and Atmospheric Administration and the United States Geological Survey relating to the best available science regarding future changes in sea levels, precipitation, intensity of hurricanes, or other information or data relevant to the identification of flood related hazards or risk;

“(v) any other relevant information as may be recommended by the Technical Mapping Advisory Council; and

“(vi) work with States, local communities, and property owners to identify areas and features described in subsection (b)(2)(E).

“(2) In general. In carrying out the program established under subsection (a), the Administrator shall identify, review, update, and maintain, and publish flood hazard and flood risk information with respect to--

“(A) all populated areas and areas of possible population growth located within the 100-year floodplain;

“(B) all populated areas and areas of possible population growth located within the 500-year floodplain;

“(C) areas of residual risk, including areas where flood hazards are reduced by levees, dams, other flood control structures and non-structural flood mitigation features;

“(D) areas that could be inundated as a result of operation or the failure of a levee, dam, or other flood control structure;

“(E) the level of flood hazard reduction provided by flood control structures and by non-structural flood mitigation features;

“(F) all areas of the United States, for flood hazard types and additional flood frequencies deemed necessary by the Administrator; and

“(G) in consultation with the Technical Mapping Advisory Council, future flood risk to the maximum extent feasible.

“(c) Authorization of appropriations. There is authorized to be appropriated to the Administrator to carry out this section \$ 400,000,000 for each of fiscal years 2013 through 2017.

(d)(1) The National Flood Insurance Act of 1968 is amended by striking section 1363 (42 U.S.C. 4104) and inserting in lieu thereof the following:

**“Sec. 1363. Determinations of flood elevation and area of special flood hazard. (42 U.S.C. 4104)**

“(a) Publication of information; establishment of areas of special flood hazard and associated flood elevations. The Administrator is authorized to—

“(1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, within five years following the date of the enactment of this Act [enacted Aug. 1, 1968], and

“(2) establish or update areas of special flood hazard and associated flood elevations in all such areas until the date specified in section 4026 of this title.

“(b) Standards. In updating and maintaining areas of special flood hazard and associated flood elevation determinations under this section, the Administrator shall--

“(1) establish standards to—

“(A) ensure that such flood hazard determinations are adequate for--

“(i) use in establishing rates of probable flood loss; and

“(ii) use by State and local governments in managing development to reduce the risk of flooding; and

“(B) facilitate identification and use of consistent methods of data collection and analysis by the Administrator, in conjunction with State and local governments, in developing maps for communities with similar flood risks, as determined by the Administrator; and

“(2) publish maps in a format that is--

“(A) digital geospatial data compliant;

“(B) compliant with generally accepted open publishing and data exchange standards; and

“(C) aligned with official data defined by the National Geodetic Survey.

“(3) Elements. Flood hazard determinations made under this section shall—

“(A) Be developed following an assessment of the accuracy of current ground elevation data; and

“(B) be developed on a watershed or other appropriate technical basis--

“(i) to provide the most technically effective and efficient studies and hydrologic and hydraulic modeling; and

- “(ii) to eliminate, to the maximum extent possible, discrepancies between adjacent political subdivisions.
- “(4) use, in identifying, reviewing, updating, maintaining, or publishing any flood hazard determination required under this section or under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.), the most accurate topography and elevation data available.
- “(5) use coastal flood models that represent and communicate flood risk in a manner that is--
  - “(A) technically and scientifically appropriate; and
  - “(B) without regard to any prescribed erosion formula related to the cross-sectional area or primary frontal dunes.
- “(c) Review and updating areas of special flood hazard and associated flood elevations, making data available—
  - “(1) Community request to revise flood hazard determinations. Upon the adoption by the Administrator of any recommendation by the Technical Mapping Advisory Council for reviewing, updating, or maintaining flood hazard determinations in accordance with this section, a community that believes that its flood insurance rates in effect prior to adoption would be affected by the adoption of such recommendation may submit a request for an update of such flood hazard determinations, which may be considered at the Administrator's sole discretion. The Administrator shall establish a protocol for the evaluation of such community requests.
  - “(2) Review of flood hazard determinations. Once during each 5-year period (the 1st such period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994]) or more often as the Administrator determines necessary, the Administrator shall assess the need to revise and update flood hazard determinations identified, delineated, or established under this section, based on an analysis of all natural hazards affecting flood risks.
  - “(3) Updating flood hazard determinations. The Administrator shall revise and update areas of special flood hazard and associated flood elevations--
    - “(A) upon the determination of the Administrator, according to the assessment under subsection (c)(2), that revision and updating are necessary for the areas; or
    - “(B) upon the request from any State or local government stating that flood hazard determinations in the State or locality need revision or updating, if sufficient technical data justifying the request is submitted and the unit of government making the request agrees to provide funds in an amount determined by the Administrator.
  - “(4) Availability of flood data. To promote compliance with the requirements of this title, the Administrator shall make flood hazard determinations and related information available free of charge to the Federal entities for lending regulation, Federal agency lenders, State agencies directly responsible for coordinating the national flood insurance program, and appropriate representatives of communities participating in the national flood insurance program, and at a reasonable cost to all other persons. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 4017(b)(6) of this title.
  - “(5) Notification of flood hazard determination changes. The Administrator shall cause notice to be published in the Federal Register (or shall provide notice by another comparable method) of any change to special flood hazard areas and associated flood elevations. Such notice shall be published or otherwise provided not later than 30 days after the change becomes effective. Notice by any method other than publication in the Federal Register shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as notice in the Federal Register. All notices under this subsection shall include information on how to obtain copies of the changes.
  - “(6) Summary of flood hazard determination changes. The Administrator shall publish separately in their entirety within a summary, all changes and revisions to special flood hazard areas and associated flood elevations for which notice was published in the

Federal Register or otherwise provided during the preceding 6 months. The Administrator shall make such summaries available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the national flood insurance program pursuant to section 4017 of this title and at cost to all other parties. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 4017(b)(6) of this title.

- “(7) Provision of information. In the implementation of revisions to and updates to special flood hazard areas and associated flood elevations, the Administrator shall share information, to the extent appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs.
- “(d) Communication and outreach.
  - “(1) State, Local, Tribal, Territorial officials. In general. The Administrator shall--
    - “(A) before commencement of any flood hazard determination as may be made pursuant to section 1363 of the National Flood Insurance Act of 1968 (as amended) (42 U.S.C. 4104), notify each community affected of the model or models that the Administrator plans to use in such process and provide an explanation of why such model or models are appropriate;
    - “(B) provide each community affected a maximum 30-day period beginning upon notification under subparagraph (A) to consult with the Administrator regarding the appropriateness, with respect to such community, of the model or models to be used; provided that consultation by a community pursuant to this subparagraph shall not waive or otherwise affect any right of the community to appeal any flood hazard determinations;
    - “(C) upon completion of the first Independent Data Submission, transmit a copy of such Submission to the affected community, provide the affected community a maximum 30-day period during which the community may provide data to Administrator that can be used to supplement or modify the existing data, and incorporate any data that is consistent with prevailing engineering principles;
    - “(D) work to enhance communication and outreach to States, local communities, and property owners about the effects--
      - “(i) of any potential changes to flood hazard determinations that may result from the program required under this section; and
      - “(ii) that any such changes may have on flood insurance purchase requirements;
    - “(E) engage with local communities to enhance communication and outreach to the residents of such communities, including tenants (with regard to contents insurance), on the matters described under subparagraph (D);
  - “(2) Congress—
    - “(A) Not less than 30 days before issuance of any preliminary flood hazard determination, notify the Senators for each State affected and each Member of the House of Representatives for each congressional district affected by the preliminary determination in writing of--
      - “(i) the estimated schedule for--
        - “(I) community meetings regarding the preliminary determination;
        - “(II) publication of notices regarding the preliminary determination in local newspapers; and
        - “(III) the commencement of the appeals process regarding the determination; and
      - “(ii) the estimated number of homes and businesses that will be affected by changes contained in the preliminary determination, including how many structures will be that were not previously located in an area having special flood hazards will be located within such an area under the preliminary determination; and
    - “(B) upon the issuance of any proposed determination and any notice of an opportunity to make an appeal relating to the proposed determination, notify the Senators for each

State affected and each Member of the House of Representatives for each congressional district affected by the proposed action taken by the Administrator with respect to the proposed determination or an appeal relating to the proposed determination.

- “(3) Required activities. The communication and outreach activities required under paragraph (1) shall include—
- “(A) notifying property owners when their properties become included in, or when they are excluded from, an area covered by the mandatory flood insurance purchase requirement under section 4012a of this title;
  - “(B) educating property owners regarding the flood risk and reduction of this risk in their community, including the continued flood risks to areas that are no longer subject to the flood insurance mandatory purchase requirement;
  - “(C) educating property owners regarding the benefits and costs of maintaining or acquiring flood insurance, including, where applicable, lower-cost preferred risk policies under the National Flood Insurance Act of 1968 (*42 U.S.C. 4011 et seq.*) for such properties and the contents of such properties;
  - “(D) educating property owners about flood hazard determination revisions and the process available to such owners to appeal proposed changes in flood elevations through their community, including by notifying local radio and television stations; and
  - “(E) encouraging property owners to maintain or acquire flood insurance coverage.
- “(e) Publication or notification of proposed flood elevation determinations. In establishing projected flood elevations pursuant to this section and designating areas having special flood hazards for land use purposes with respect to any community pursuant to section 4102 of this title, the Administrator shall first propose such determinations and designations by publication for comment by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper or other legal format that the Administrator determines is functionally equivalent following notification to the local government.
- “(f) Publication of flood elevation determinations; appeal of owner or lessee to local government; scientific or technical knowledge or information as basis for appeal; modification of proposed determinations. The Administrator shall publish notification of flood elevation determinations and designations of areas having special flood hazards in a prominent local newspaper or other legal format that the Administrator determines is functionally equivalent following notification to the local government. Any owner or lessee of real property within the community who believes the owner’s or lessee’s property rights to be adversely affected by the Administrator’s proposed determination may appeal such determination to the local government within the 90 days set forth in the notification. The sole grounds for appeal shall be the possession of knowledge or information indicating that (1) the elevations being proposed by the Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, or (2) the designation of an identified special flood hazard area is scientifically or technically incorrect.
- “(g) Appeals by private persons; submission of negating or contradicting data to community; opinion of community respecting justification for appeal by community; transmission of individual appeals to Administrator; filing of community action with Administrator. Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the Administrator’s finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the Administrator’s determination, copies of individual appeals shall be sent to the Administrator as they are received by the community, and the community’s appeal or a copy

of its decision not to appeal shall be filed with the Administrator within the ninety days set forth in the notification.

- “(h) Administrative review of appeals by private persons; modification of proposed determinations; decision of Administrator; form and distribution. In the event the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (j), the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Administrator's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.
- “(i) Determination by Administrator in the absence of appeals: If the Administrator has not received any appeals, upon expiration of the 90-day appeal period established under subsection (f) of this section, the Administrator's proposed determination shall become final 14 days after the expiration of the 90-day appeal period. The community shall be given a reasonable time after the Administrator's final determination in which to adopt local land use and control measures consistent with the Administrator's determination.
- “(j) Administrative review of appeals by community; agencies for resolution of conflicting data; availability of flood insurance pending such resolution; time for determination of Administrator; community adoption of local land use and control measures within reasonable time of final determination; public inspection and admissibility in evidence of reports and other administrative information. Upon appeal by any community, as provided by this section, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Administrator shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to the Scientific Resolution Panel provided for in section 4104-1 of this title. Until the conflict in data is resolved, and the Administrator makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Administrator shall make his determination within a reasonable time. The community shall be given a reasonable time after the Administrator's final determination in which to adopt local land use and control measures consistent with the Administrator's determination. The reports and other information used by the Administrator in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.
- “(k) Reimbursement of certain expenses. When, incident to any appeal under subsection (f) or (g) of this section, the owner or lessee of real property or the community, as the case may be, or, in the case of an appeal that is resolved by submission of conflicting data to the Scientific Resolution Panel provided for in section 1363A (42 U.S.C. 4104-1), the community, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal based on a scientific or technical error on the part of the Federal Emergency Management Agency, which is successful in whole or part, the Administrator shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Administrator in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. The Administrator may use such amounts from the National Flood Insurance Fund established under section 1310 (42 U.S.C.

4017) as may be necessary to carry out this subsection. The Administrator shall promulgate regulations to carry out this subsection.

“(1) Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations. Except as provided in section 4104-1 of this title, any appellant aggrieved by any final determination of the Administrator upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5. During the pendency of any such litigation, all final determinations of the Administrator shall be effective for the purposes of this title unless stayed by the court for good cause shown.

***Analysis:***

FEMA recognizes that the intent of recent proposed changes to the National Flood Insurance Program (NFIP) are intended to support continued identification of flood hazards, including future flood conditions, and analysis of flood risk that support the operation of the NFIP and enable property owners and State, local, Tribal and Territorial (SLTT) governments to recognize and manage flood risk. FEMA is also committed to these goals.

This summary is provided as a guide to help maintain a focus on the overall objectives that any proposed legislation should strive to achieve.

In analyzing proposed legislation and in evaluating the effectiveness of FEMA’s current authorizations, FEMA is guided by the following set of **principles**:

1. Flood hazard and flood risk information should exist everywhere in the United States at a scale and degree of accuracy appropriate for a given location, based on current and potential flood risk. Some locations may require highly developed analysis of the Special Flood Hazard Area (SFHA) and other areas of residual risk while other areas may not need such specificity;
2. Flood hazard and flood risk information must be available to everyone and delivered in a format that is easy to use and understand;
3. Congress and FEMA should identify additional opportunities to expand the contribution of SLTT partners and the private sector to work collaboratively to improve flood hazard and flood risk identification techniques and to identify the level of analysis appropriate for each SLTT’s unique circumstances; and
4. FEMA should continue to rely on the Technical Mapping Advisory Council (TMAC) to help FEMA develop solutions and strategies for appropriately incorporating emerging priorities and technologies into the flood hazard and flood risk identification process, to serve as an exchange of information between FEMA and its stakeholders, and to maintain sufficient flexibility in FEMA’s authorities to implement those solutions.

**While these principles are simple and straightforward** (and likely to receive widespread support from FEMA’s stakeholders), **the existing legislation is not**. In 1968 (and 1973), Congress identified the need to provide for the expeditious identification and dissemination of information concerning “*flood-prone areas*” by authorizing broad authorities to “*identify and publish information*” with respect to “*all flood plain areas*” having “*special flood hazards*” and to establish or update “*flood-risk zone data.*” See 42 U.S.C. 4101(a); 42 U.S.C. 4002(b)(2).

To implement this legislation, the agency (HUD then FEMA) defined the area of special flood hazard (the SFHA) as the 1% annual chance or base flood, created the flood elevation study (Flood Insurance Study), and the Flood Insurance Rate Map. See 44 C.F.R. 59.1. These tools were used to develop detailed flood hazard information within the SFHA for over 97 % of the U.S. population, and to establish minimum floodplain management standards that state and local governments must adopt to participate in the NFIP. In 1973, Congress mandated that structures



located within the SFHA be required to obtain flood insurance if the structure is federally funded or funded by a federally insured mortgage.

The compulsory nature of the requirements associated with the SFHA caused Congress to establish an appropriate level of due process for determinations related to the SFHA, the elements of which were codified in 42 U.S.C. 4104. Flood Disaster Protection Act of 1973, P.L. 93-234, § 110. However, those same concerns are not as demanding when FEMA is identifying non-regulatory flood data that improves the understanding of flood risk but does not compel a specific course of conduct (such as mandatory purchase of flood insurance and compliance with floodplain management regulations). As such, **FEMA believes that clarifying the distinction between determinations respecting the SFHA (regulatory) and the identification of flood hazard data in addition to or outside of the SFHA (non-regulatory) would be beneficial and would expedite the delivery of important non-regulatory information to the public,** consistent with the guiding principles outlined above.

The three **primary uses of flood hazard information** developed by FEMA are:

- Identification of the extent of the base flood (SFHA) and specific elevations therein which in turn, determine the extent of the mandatory purchase requirement and inform rates of insurance;
- Identification of floodplain areas that are subject to federal, state, and local land management requirements (and E.O. 11988 as amended by E.O. 13690);
- Identification of areas inside and outside of the SFHA that are subject to flood risks beyond regulatory minimum requirements.

As FEMA has continued to implement the program over the past 50 years, an improved understanding of our customers and their evolving needs has added clarity regarding the importance of providing more robust flood hazard information beyond the SFHA and 1-percent annual chance flood elevation. While the authority to obtain that data may have existed in the 1968 Act, the Biggert-Waters Flood Insurance Reform Act of 2012 (BW-12), Div. F of Pub. L. 112-141, § 100216(b) (42 U.S.C. 4101b(b)), further clarified the importance of obtaining flood hazard data (Flood-risk zone data), not just in the SFHA, but also in the 0.2 % annual chance flood and other areas of residual risk. In BW-12, Congress also re-established the TMAC to provide various recommendations to FEMA on the identification of flood risk and other aspects of the flood mapping program. BW-12 § 100215; 42 U.S.C. 4101a. For the National Flood Mapping Program to satisfy the intent of the current statute and support a modern flood risk management strategy for the NFIP, **less prescriptive legislation and more flexibility is warranted to enable FEMA to leverage past and future investments in flood hazard information to enhance the nation's understanding of flood risk.**

In outlining and enumerating the additional types of data FEMA should be collecting, one of the unintended consequences of BW-12 and other amendments to the National Flood Insurance Act of 1968 (NFIA) has been to blur the distinction between regulatory and non-regulatory flood hazard identification. In 1973, when Congress first mandated a specific process for flood hazard determinations, the entirety of that process could be found in 42 U.S.C. 4104. Now, however, additional elements of the process for publishing flood elevation determinations can also be found in 42 U.S.C. 4101(h), and 42 U.S.C. 4101b(d)(1).

Moreover, prior amendments to the NFIA, and in turn some previous proposed legislation, by adopting certain regulatory concepts or terms unintentionally, lock FEMA into a paradigm that may not be most effective way to deliver flood hazard and flood risk information in the future. For example, FEMA's mapping authorities presently refer to "National Flood Insurance Rate Map panels" and the "first independent data submission," concepts and terminology that were previously exclusively in FEMA regulation and policy. This continued codification of specific methods of designating flood risk is contrary to TMAC recommendations as well as the previous intent of Congress as expressed over time, resulting in undue prescriptiveness that inhibits FEMA's ability to leverage emerging science and technology and to deliver flood risk data that supports a modern approach to flood risk management for the NFIP.

Stakeholders, TMAC and other consumers of FEMA’s flood hazard data have commented on the complexity of the existing statutory scheme. FEMA agrees with these stakeholders that **the existing statutory scheme for identifying flood hazards could be simplified through the following measures:**

- Replace references in the legislation to “flood maps,” “National Flood Insurance program maps,” “map panels” and other similar terms with “flood hazard and risk information.” Deleting reference to specific map products in authorizing legislation gives FEMA more flexibility to identify flood hazard and flood risk information and recognizes that maps are only one aspect of the collection, analysis and display of flood hazard information;
- Remove references to undefined terms derived from FEMA’s regulations and policy, such as specific lettered hazard zones, as these terms tend to bind FEMA to its existing administrative structure, limiting the opportunity to innovate;
- Separate the regulatory requirements related to the identification of the SFHA from the delivery of non-regulatory flood hazard information in order to expedite the delivery of such information. The identification and delivery of non-regulatory flood hazard and flood risk information is currently inhibited by the due process requirements associated with regulatory flood hazard data.

These measures are not exhaustive; they are practice tools that FEMA has developed to help inform the process of reauthorizing flood hazard identification provisions of the NFIA. FEMA believes that these measures go a long way in helping to maintain a focus on the ultimate objectives of NFIP reform and reauthorization as discussed above. FEMA is looking forward to engaging in conversation with Congress and its stakeholders as we work collaboratively towards the goal of reauthorization.

Attached to this summary is a proposed re-working of FEMA’s existing statutory authorities that attempts to achieve the objectives set forth above.

Specifically, this proposal would make 42 U.S.C. 4101b, currently titled “National Flood Mapping Program” the home to all of FEMA’s authority to undertake flood hazard and flood risk identification. FEMA proposes re-naming the section “National Flood Hazard and Flood Risk Identification Program” and relocating all aspects of 42 U.S.C. 4101 related to those broad authorities into this section.

In addition, 42 U.S.C. 4104 “Flood Hazard Determinations” would become the home of all requirements (including due process) that relate to the creation of the “determinations” (SFHA, BFE) that relate to mandatory purchase and floodplain management requirements. Aspects of 42 U.S.C. 4101 related to the regulatory aspects of flood hazard determinations would be relocated to 4104. Because the substance from 42 U.S.C. 4101 would be relocated to one of the two aforementioned sections, 42 U.S.C. 4101 would be deleted.

The proposed changes are fundamentally administrative and are intended to improve efficiency and reduce complexity of the flood hazard and flood risk identification program and to allow flexibility as technology changes over time. Every effort has been made to maintain the original intent of the various provisions, as understood by FEMA, limiting new language to be consistent with that which has appeared in recent proposed legislation and which appears to have widespread support.<sup>2</sup> Each proposed change is identified and commented upon in the “track changes” version, whereas the clean version presents a proposed rewrite as it might appear in the United States Code.

***Comparative type:***

**National Flood Insurance Act of 1968**

**Sec. 1360. Identification of flood-prone areas. (42 U.S.C. 4101)**

- (a) Publication of information; establishment of flood-risk zones; estimates of flood-caused loss.—The Administrator is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms, in order that he may—
- (1) identify and publish information with respect to all flood-plain areas, including coastal areas located in the United States, which has special flood hazards, within five years following August 1, 1968, and
  - (2) establish or update flood-risk zone data in all such areas, and make estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas until the date specified in section 4026 of this title.
- (b) Accelerated identification of flood-risk zones; authority of Administrator: grants, technical assistance, transactions, and payments.—The Administrator is directed to accelerate the identification of risk zones within flood-prone and mudslide-prone areas, as provided by subsection (a)(2) of this section, in order to make known the degree of hazard within each such zone at the earliest possible date. To accomplish this objective, the Administrator is authorized, without regard to subsections (a) and (b) of section 3324 of title 31 and section 6101 of title 41, to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.
- (c) Priority in allocation of manpower and other available resources for identification and mapping of flood hazard areas and flood-risk zones.—The Secretary of Defense (through the Army Corps of Engineers), the Secretary of the Interior (through the United States Geological Survey), the Secretary of Agriculture (through the Soil Conservation Service), the Secretary of Commerce (through the National Oceanic and Atmospheric Administration), the head of the Tennessee Valley Authority, and the heads of all other Federal agencies engaged in the identification or delineation of flood-risk zones within the several States shall, in consultation with the Administrator, give the highest practicable priority in the allocation of available manpower and other available resources to the identification and mapping of flood hazard areas and flood-risk zones, in order to assist the Administrator to meet the deadline established by this section.
- (d) Plan for bringing communities with flood-risk zones into full program status.—The Administrator shall, not later than September 30, 1984, submit to the Congress a plan for bringing all communities containing flood-risk zones into full program status by September 30, 1987.
- (e) Review of flood maps.—Once during each 5-year period (the 1st such period beginning on September 23, 1994) or more often as the Administrator determines necessary, the Administrator shall assess the need to revise and update all floodplain areas and flood-risk zones identified, delineated, or established under this section, based on an analysis of all natural hazards affecting flood risks.
- (f) Updating flood maps.—The Administrator shall revise and update any floodplain areas and flood-risk zones—
- (1) upon the determination of the Administrator, according to the assessment under subsection (e), that revision and updating are necessary for the areas and zones; or
  - (2) upon the request from any State or local government stating that specific floodplain areas or flood-risk zones in the State or locality need revision or updating, if sufficient

~~appeal shall be the possession of knowledge or information indicating that (1) the elevations being proposed by the Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, or (2) the designation of an identified special flood hazard area is scientifically or technically incorrect.~~

- ~~(c) Appeals by private persons; submission of negating or contradicting data to community; opinion of community respecting justification for appeal by community; transmission of individual appeals to Administrator; filing of community action with Administrator~~

~~Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the Administrator's finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the Administrator's determination, copies of individual appeals shall be sent to the Administrator as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's notification.~~

- ~~(d) Administrative review of appeals by private persons; modification of proposed determinations; decision of Administrator; form and distribution~~

~~In the event the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (c), the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Administrator's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.~~

- ~~(e) Administrative review of appeals by community; agencies for resolution of conflicting data; availability of flood insurance pending such resolution; time for determination of Administrator; community adoption of local land use and control measures within reasonable time of final determination; public inspection and admissibility in evidence of reports and other administrative information~~

~~Upon appeal by any community, as provided by this section, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Administrator shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to the Scientific Resolution Panel provided for in section 4104-1 of this title. Until the conflict in data is resolved, and the Administrator makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Administrator shall make his determination within a reasonable time. The community shall be given a reasonable time after the Administrator's final determination in which to adopt local land use and control measures consistent with the Administrator's determination. The reports and other information used by the Administrator in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.~~

- ~~(f) Reimbursement of certain expenses~~

~~When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, or, in the case of an appeal that is resolved by submission of conflicting data to the Scientific Resolution Panel provided for in section 4104-1 of this title, the community, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal based on a scientific or technical error on the part of the Federal Emergency Management Agency, which is successful in whole or part, the Administrator shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Administrator in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. The Administrator may use such amounts from the National Flood Insurance Fund established under section 4017 of this title as may be necessary to carry out this subsection. The Administrator shall promulgate regulations to carry out this subsection.~~  
(g) ~~Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations~~

~~Except as provided in section 4104-1 of this title, any appellant aggrieved by any final determination of the Administrator upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5. During the pendency of any such litigation, all final determinations of the Administrator shall be effective for the purposes of this chapter unless stayed by the court for good cause shown with an explanatory statement.~~

\* \* \* \*

**§ 1363. Determinations of flood elevation and area of special flood hazard. (42 U.S.C. 4104)**

- (a) Publication of information; establishment of areas of special flood hazard and associated flood elevations. The Administrator is authorized to—
- (1) identify and publish information with respect to all flood plain areas, including coastal areas located in the United States, which have special flood hazards, within five years following the date of the enactment of this Act [enacted Aug. 1, 1968], and
  - (2) establish or update areas of special flood hazard and associated flood elevations in all such areas until the date specified in section 4026 of this title.
- (b) Standards. In updating and maintaining areas of special flood hazard and associated flood elevation determinations under this section, the Administrator shall--
- (1) establish standards to—
    - (A) ensure that such flood hazard determinations are adequate for--
      - (i) use in establishing rates of probable flood loss; and
      - (ii) use by State and local governments in managing development to reduce the risk of flooding; and
    - (B) facilitate identification and use of consistent methods of data collection and analysis by the Administrator, in conjunction with State and local governments, in developing maps for communities with similar flood risks, as determined by the Administrator; and
  - (2) publish maps in a format that is--
    - (A) digital geospatial data compliant;
    - (B) compliant with the generally accepted open publishing and data exchange standards; and
    - (C) aligned with official data defined by the National Geodetic Survey.

- (3) Elements. Flood hazard determinations made under this section shall—
- (A) Be developed following an assessment of the accuracy of current ground elevation data; and
  - (B) be developed on a watershed or other appropriate technical basis--
    - (i) to provide the most technically effective and efficient studies and hydrologic and hydraulic modeling; and
    - (ii) to eliminate, to the maximum extent possible, discrepancies between adjacent political subdivisions.
- (4) use, in identifying, reviewing, updating, maintaining, or publishing any flood hazard determination required under this section or under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.), the most accurate topography and elevation data available.
- (5) use coastal flood models that represent and communicate flood risk in a manner that is--
- (A) technically and scientifically appropriate; and
  - (B) without regard to any prescribed erosion formula related to the cross-sectional area or primary frontal dunes.
- (c) Review and updating areas of special flood hazard and associated flood elevations, making data available—
- (1) Community request to revise flood hazard determinations. Upon the adoption by the Administrator of any recommendation by the Technical Mapping Advisory Council for reviewing, updating, or maintaining flood hazard determinations in accordance with this section, a community that believes that its flood insurance rates in effect prior to adoption would be affected by the adoption of such recommendation may submit a request for an update of such flood hazard determinations, which may be considered at the Administrator's sole discretion. The Administrator shall establish a protocol for the evaluation of such community requests.
  - (2) Review of flood hazard determinations. Once during each 5-year period (the 1st such period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 [enacted Sept. 23, 1994]) or more often as the Administrator determines necessary, the Administrator shall assess the need to revise and update flood hazard determinations identified, delineated, or established under this section, based on an analysis of all natural hazards affecting flood risks.
  - (3) Updating flood hazard determinations. The Administrator shall revise and update areas of special flood hazard and associated flood elevations--
    - (A) upon the determination of the Administrator, according to the assessment under subsection (c)(2), that revision and updating are necessary for the areas; or
    - (B) upon the request from any State or local government stating that flood hazard determinations in the State or locality need revision or updating, if sufficient technical data justifying the request is submitted and the unit of government making the request agrees to provide funds in an amount determined by the Administrator.
  - (4) Availability of flood data. To promote compliance with the requirements of this title, the Administrator shall make flood hazard determinations and related information available free of charge to the Federal entities for lending regulation, Federal agency lenders, State agencies directly responsible for coordinating the national flood insurance program, and appropriate representatives of communities participating in the national flood insurance program, and at a reasonable cost to all other persons. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 4017(b)(6) of this title.
  - (5) Notification of flood hazard determination changes. The Administrator shall cause notice to be published in the Federal Register (or shall provide notice by

another comparable method) of any change to special flood hazard areas and associated flood elevations. Such notice shall be published or otherwise provided not later than 30 days after the change becomes effective. Notice by any method other than publication in the Federal Register shall include all pertinent information, provide for regular and frequent distribution, and be at least as accessible to map users as notice in the Federal Register. All notices under this subsection shall include information on how to obtain copies of the changes.

(6) Summary of flood hazard determination changes. The Administrator shall publish separately in their entirety within a summary, all changes and revisions to special flood hazard areas and associated flood elevations for which notice was published in the Federal Register or otherwise provided during the preceding 6 months. The Administrator shall make such summaries available, free of charge, to Federal entities for lending regulation, Federal agency lenders, and States and communities participating in the national flood insurance program pursuant to section 4017 of this title and at cost to all other parties. Any receipts resulting from this subsection shall be deposited in the National Flood Insurance Fund, pursuant to section 4017(b)(6) of this title.

(7) Provision of information. In the implementation of revisions to and updates to special flood hazard areas and associated flood elevations, the Administrator shall share information, to the extent appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere and representatives from State coastal zone management programs.

(d) Communication and outreach.

(1) State, Local, Tribal, Territorial officials. In general. The Administrator shall--

(A) before commencement of any flood hazard determination as may be made pursuant to section 1363 of the National Flood Insurance Act of 1968 (as amended) (42 U.S.C. 4104), notify each community affected of the model or models that the Administrator plans to use in such process and provide an explanation of why such model or models are appropriate;

(B) provide each community affected a maximum 30-day period beginning upon notification under subparagraph (A) to consult with the Administrator regarding the appropriateness, with respect to such community, of the model or models to be used; provided that consultation by a community pursuant to this subparagraph shall not waive or otherwise affect any right of the community to appeal any flood hazard determinations;

(C) upon completion of the first Independent Data Submission, transmit a copy of such Submission to the affected community, provide the affected community a maximum 30-day period during which the community may provide data to Administrator that can be used to supplement or modify the existing data, and incorporate any data that is consistent with prevailing engineering principles;

(D) work to enhance communication and outreach to States, local communities, and property owners about the effects--

(i) of any potential changes to flood hazard determinations that may result from the program required under this section; and

(ii) that any such changes may have on flood insurance purchase requirements;

(E) engage with local communities to enhance communication and outreach to the residents of such communities, including tenants (with regard to contents insurance), on the matters described under subparagraph (D);

(2) Congress—

(A) Not less than 30 days before issuance of any preliminary flood hazard determination, notify the Senators for each State affected and each Member of

the House of Representatives for each congressional district affected by the preliminary determination in writing of--

(i) the estimated schedule for--

(I) community meetings regarding the preliminary determination;  
(II) publication of notices regarding the preliminary determination in local newspapers; and

(III) the commencement of the appeals process regarding the determination; and

(ii) the estimated number of homes and businesses that will be affected by changes contained in the preliminary determination, including how many structures will be that were not previously located in an area having special flood hazards will be located within such an area under the preliminary determination; and

(B) upon the issuance of any proposed determination and any notice of an opportunity to make an appeal relating to the proposed determination, notify the Senators for each State affected and each Member of the House of Representatives for each congressional district affected by the proposed action taken by the Administrator with respect to the proposed determination or an appeal relating to the proposed determination.

(3) Required activities. The communication and outreach activities required under paragraph (1) shall include—

(A) notifying property owners when their properties become included in, or when they are excluded from, an area covered by the mandatory flood insurance purchase requirement under section 4012a of this title;

(B) educating property owners regarding the flood risk and reduction of this risk in their community, including the continued flood risks to areas that are no longer subject to the flood insurance mandatory purchase requirement;

(C) educating property owners regarding the benefits and costs of maintaining or acquiring flood insurance, including, where applicable, lower-cost preferred risk policies under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) for such properties and the contents of such properties;

(D) educating property owners about flood hazard determination revisions and the process available to such owners to appeal proposed changes in flood elevations through their community, including by notifying local radio and television stations; and

(E) encouraging property owners to maintain or acquire flood insurance coverage.

(e) Publication or notification of proposed flood elevation determinations. In establishing projected flood elevations pursuant to this section and designating areas having special flood hazards for land use purposes with respect to any community pursuant to section 4102 of this title, the Administrator shall first propose such determinations and designations by publication for comment by direct notification to the chief executive officer of the community, and by publication in a prominent local newspaper or other legal format that the Administrator determines is functionally equivalent following notification to the local government.

(f) Publication of flood elevation determinations; appeal of owner or lessee to local government; scientific or technical knowledge or information as basis for appeal; modification of proposed determinations. The Administrator shall publish notification of flood elevation determinations and designations of areas having special flood hazards in a prominent local newspaper or other legal format that the Administrator determines is functionally equivalent following notification to the local government. Any owner or lessee of real property within the community who believes the owner's or lessee's property rights to be adversely affected by the Administrator's proposed determination



may appeal such determination to the local government within the 90 days set forth in the notification. The sole grounds for appeal shall be the possession of knowledge or information indicating that (1) the elevations being proposed by the Administrator with respect to an identified area having special flood hazards are scientifically or technically incorrect, or (2) the designation of an identified special flood hazard area is scientifically or technically incorrect.

(g) Appeals by private persons; submission of negating or contradicting data to community; opinion of community respecting justification for appeal by community; transmission of individual appeals to Administrator; filing of community action with Administrator. Appeals by private persons shall be made to the chief executive officer of the community, or to such agency as he shall publicly designate, and shall set forth the data that tend to negate or contradict the Administrator's finding in such form as the chief executive officer may specify. The community shall review and consolidate all such appeals and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name. Whether or not the community decides to appeal the Administrator's determination, copies of individual appeals shall be sent to the Administrator as they are received by the community, and the community's appeal or a copy of its decision not to appeal shall be filed with the Administrator within the ninety days set forth in the notification.

(h) Administrative review of appeals by private persons; modification of proposed determinations; decision of Administrator; form and distribution. In the event the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits, in accordance with the procedures set forth in subsection (j), the appeals filed within the community by private persons and shall make such modifications of his proposed determinations as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals. The Administrator's decision shall be in written form, and copies thereof shall be sent both to the chief executive officer of the community and to each individual appellant.

(i) Determination by Administrator in the absence of appeals: If the Administrator has not received any appeals, upon expiration of the 90-day appeal period established under subsection (f) of this section, the Administrator's proposed determination shall become final 14 days after the expiration of the 90-day appeal period. The community shall be given a reasonable time after the Administrator's final determination in which to adopt local land use and control measures consistent with the Administrator's determination.

(j) Administrative review of appeals by community; agencies for resolution of conflicting data; availability of flood insurance pending such resolution; time for determination of Administrator; community adoption of local land use and control measures within reasonable time of final determination; public inspection and admissibility in evidence of reports and other administrative information. Upon appeal by any community, as provided by this section, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his proposed determination is based. The Administrator shall resolve such appeal by consultation with officials of the local government involved, by administrative hearing, or by submission of the conflicting data to the Scientific Resolution Panel provided for in section 4104-1 of this title. Until the conflict in data is resolved, and the Administrator makes a final determination on the basis of his findings in the Federal Register, and so notifies the governing body of the community, flood insurance previously available within the community shall continue to be available, and no person shall be denied the right to purchase such insurance at chargeable rates. The Administrator shall make his determination within a reasonable time. The community shall be given a reasonable time after the Administrator's final determination in which to adopt local land use and control measures consistent with the

Administrator's determination. The reports and other information used by the Administrator in making his final determination shall be made available for public inspection and shall be admissible in a court of law in the event the community seeks judicial review as provided by this section.

(k) Reimbursement of certain expenses. When, incident to any appeal under subsection (f) or (g) of this section, the owner or lessee of real property or the community, as the case may be, or, in the case of an appeal that is resolved by submission of conflicting data to the Scientific Resolution Panel provided for in section 1363A (42 U.S.C. 4104-1), the community, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal based on a scientific or technical error on the part of the Federal Emergency Management Agency, which is successful in whole or part, the Administrator shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Administrator in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. The Administrator may use such amounts from the National Flood Insurance Fund established under section 1310 (42 U.S.C. 4017) as may be necessary to carry out this subsection. The Administrator shall promulgate regulations to carry out this subsection.

(l) Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations. Except as provided in section 4104-1 of this title, any appellant aggrieved by any final determination of the Administrator upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5. During the pendency of any such litigation, all final determinations of the Administrator shall be effective for the purposes of this title unless stayed by the court for good cause shown.

## **Biggert-Waters Flood Insurance Reform Act of 2012**

### **Sec. 100215. Technical Mapping Advisory Council. (42 U.S.C. 4101a)**

- (a) Establishment. There is established a council to be known as the Technical Mapping Advisory Council (in this section referred to as the "Council").
- (b) Membership.
  - (1) In general. The Council shall consist of--
    - (A) the Administrator (or the designee thereof);
    - (B) the Secretary of the Interior (or the designee thereof);
    - (C) the Secretary of Agriculture (or the designee thereof);
    - (D) the Under Secretary of Commerce for Oceans and Atmosphere (or the designee thereof); and
    - (E) 17 additional members appointed by the Administrator or the designee of the Administrator, who shall be--
      - (i) a member of a recognized professional surveying association or organization;
      - (ii) a member of a recognized professional mapping association or organization;
      - (iii) a member of a recognized professional engineering association or organization;
      - (iv) a member of a recognized professional association or organization representing flood hazard determination firms;

- (v) a representative of the United States Geological Survey;
  - (vi) a representative of a recognized professional association or organization representing State geographic information;
  - (vii) a representative of State national flood insurance coordination offices;
  - (viii) a representative of the United States Army Corps of Engineers;
  - (ix) a member of a recognized regional flood and storm water management organization;
  - (x) 2 representatives of different State government agencies that have entered into cooperating technical partnerships with the Administrator and have demonstrated the capability to produce ~~flood insurance rate maps~~ flood hazard and flood risk information;
  - (xi) 2 representatives of different local government agencies that have entered into cooperating technical partnerships with the Administrator and have demonstrated the capability to produce ~~flood insurance maps~~ flood hazard and flood risk information;
  - (xii) a member of a recognized floodplain management association or organization;
  - (xiii) a member of a recognized risk management association or organization; ~~and~~
  - (xiv) a State mitigation officer; ~~and~~
  - (xv) a member of a recognized professional real estate brokerage association.
- (2) Qualifications. Members of the Council shall be appointed based on their demonstrated knowledge and competence regarding surveying, cartography, remote sensing, geographic information systems, or the technical aspects of preparing and using ~~flood insurance rate maps~~ flood hazard and flood risk information. In appointing members under paragraph (1)(E), the Administrator shall, to the maximum extent practicable, ensure that the membership of the Council has a balance of Federal, State, local, tribal, and private members, and includes geographic diversity, including representation from areas with coastline on the Gulf of Mexico and other States containing areas identified by the Administrator as at high risk for flooding or as areas having special flood hazards.
- (c) Duties. The Council shall--
- (1) recommend to the Administrator how to improve in a cost-effective manner the--
    - (A) accuracy, general quality, ease of use, and distribution and dissemination of ~~flood insurance rate maps~~ hazard and flood risk data information; and
    - (B) performance metrics and milestones required to effectively and efficiently ~~map~~ identify flood hazard and flood risk areas in the United States;
  - (2) recommend to the Administrator ~~mapping~~ standards and guidelines for--
    - (A) ~~flood insurance rate maps~~ collecting and maintaining flood hazard and flood risk information, including but not limited to flood hazard determinations; and
    - (B) data accuracy, data quality, data currency, and data eligibility;
  - (3) recommend to the Administrator how to maintain, on an ongoing basis, flood ~~insurance rate maps~~ hazard and flood risk ~~identification information~~;
  - (4) recommend procedures for delegating ~~mapping~~ flood hazard and flood risk identification activities to State and local ~~mapping~~ partners;
  - (5) recommend to the Administrator and other Federal agencies participating in the Council--
    - (A) methods for improving interagency and intergovernmental coordination on flood ~~mapping and flood risk determination~~ hazard and flood risk identification; and
    - (B) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies;
  - (6) provide recommendations in response to specific requests presented to the Council by the Administrator, and
  - (7) submit an annual report to the Administrator that contains--
    - (A) a description of the activities of the Council;

- (B) an evaluation of the status and performance of flood ~~insurance rate maps and mapping hazard and flood risk identification~~ activities to revise and update ~~flood insurance rate maps such products~~ as required under section 4101b of this title; and
  - (C) a summary of recommendations made by the Council to the Administrator.
- (d) Future conditions risk assessment and modeling report.
- (1) In general. The Council shall consult with scientists and technical experts, other Federal agencies, States, and local communities to--
    - (A) develop recommendations on how to--
      - (i) ensure that flood ~~insurance rate maps~~ hazard and flood risk information incorporates the best available climate science to assess flood risks; and
      - (ii) ensure that the Federal Emergency Management Agency uses the best available methodology to consider the impact of--
        - (I) the rise in the sea level; and
        - (II) future development on flood risk; and
    - (B) not later than 1 year after the date of enactment of this Act, prepare written recommendations in a future conditions risk assessment and modeling report and to submit such recommendations to the Administrator.
  - (2) Responsibility of the administrator. The Administrator, as part of the ongoing program to review and update ~~National Flood Insurance Program rate maps~~ flood hazard and flood risk information under section 4101b of this title, shall incorporate any future risk assessment submitted under paragraph (1)(B) in any such revision or update.
- (e) Chairperson. The members of the Council shall elect 1 member to serve as the chairperson of the Council (in this section referred to as the "Chairperson").
- (f) Coordination. To ensure that the Council's recommendations are consistent, to the maximum extent practicable, with national digital spatial data collection and management standards, the Chairperson shall consult with the Chairperson of the Federal Geographic Data Committee (established pursuant to Office of Management and Budget Circular A-16).
- (g) Compensation. Members of the Council shall receive no additional compensation by reason of their service on the Council.
- (h) Meetings and actions.
- (1) In general. The Council shall meet not less frequently than twice each year at the request of the Chairperson or a majority of its members, and may take action by a vote of the majority of the members.
  - (2) Initial meeting. The Administrator, or a person designated by the Administrator, shall request and coordinate the initial meeting of the Council.
- (i) Officers. The Chairperson may appoint officers to assist in carrying out the duties of the Council under subsection (c).
- (j) Staff.
- (1) Staff of FEMA. Upon the request of the Chairperson, the Administrator may detail, on a nonreimbursable basis, personnel of the Federal Emergency Management Agency to assist the Council in carrying out its duties.
  - (2) Staff of other Federal agencies. Upon request of the Chairperson, any other Federal agency that is a member of the Council may detail, on a nonreimbursable basis, personnel to assist the Council in carrying out its duties.
- (k) Powers. In carrying out this section, the Council may hold hearings, receive evidence and assistance, provide information, and conduct research, as it considers appropriate.
- (l) Report to Congress. The Administrator, on an annual basis, shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Office of Management and Budget on the--
- (1) recommendations made by the Council;

- (2) actions taken by the Federal Emergency Management Agency to address such recommendations to improve  ~~flood insurance rate maps and~~ flood hazard and flood risk data information including flood hazard determinations; and
- (3) any recommendations made by the Council that have been deferred or not acted upon, together

**Sec. 100216. National Flood Mapping Program. (42 U.S.C. 4101b)**

~~(a) Reviewing, updating, and maintaining maps.—The Administrator, in coordination with the Technical Mapping Advisory Council established under section 4101a of this title, shall establish an ongoing program under which the Administrator shall review, update, and maintain National Flood Insurance Program rate maps in accordance with this section.~~

~~(b) Mapping~~

~~(1) In general.—In carrying out the program established under subsection (a), the Administrator shall—~~

~~(A) identify, review, update, maintain, and publish National Flood Insurance Program rate maps with respect to—~~

~~(i) all populated areas and areas of possible population growth located within the 100-year floodplain;~~

~~(ii) all populated areas and areas of possible population growth located within the 500-year floodplain;~~

~~(iii) areas of residual risk, including areas that are protected by levees, dams, and other flood control structures;~~

~~(iv) areas that could be inundated as a result of the failure of a levee, dam, or other flood control structure;~~

~~(v) areas that are protected by non-structural flood mitigation features; and~~

~~(vi) the level of protection provided by flood control structures and by non-structural flood mitigation features;~~

~~(B) establish or update flood risk zone data in all such areas, and make estimates with respect to the rates of probable flood caused loss for the various flood risk zones for each such area; and~~

~~(C) use, in identifying, reviewing, updating, maintaining, or publishing any National Flood Insurance Program rate map required under this section or under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.), the most accurate topography and elevation data available.~~

~~(2) Mapping elements.—Each map updated under this section shall—~~

~~(A) assess the accuracy of current ground elevation data used for hydrologic and hydraulic modeling of flooding sources and mapping of the flood hazard and wherever necessary acquire new ground elevation data utilizing the most up-to-date geospatial technologies in accordance with guidelines and specifications of the Federal Emergency Management Agency; and~~

~~(B) develop National Flood Insurance Program flood data on a watershed basis—~~

~~(i) to provide the most technically effective and efficient studies and hydrologic and hydraulic modeling; and~~

~~(ii) to eliminate, to the maximum extent possible, discrepancies in base flood elevations between adjacent political subdivisions.~~

~~(3) Other inclusions.—In updating maps under this section, the Administrator shall include—~~

~~(A) any relevant information on coastal inundation from—~~

~~(i) an applicable inundation map of the Corps of Engineers; and~~

~~(ii) data of the National Oceanic and Atmospheric Administration relating to storm surge modeling;~~

- (B) any relevant information of the United States Geological Survey on stream flows, watershed characteristics, and topography that is useful in the identification of flood hazard areas, as determined by the Administrator;
  - (C) any relevant information on land subsidence, coastal erosion areas, changing lake levels, and other flood related hazards;
  - (D) any relevant information or data of the National Oceanic and Atmospheric Administration and the United States Geological Survey relating to the best available science regarding future changes in sea levels, precipitation, and intensity of hurricanes; and
  - (E) any other relevant information as may be recommended by the Technical Mapping Advisory Committee.
- (c) Standards.—In updating and maintaining maps under this section, the Administrator shall—
- (1) establish standards to—
    - (A) ensure that maps are adequate for—
      - (i) flood risk determinations; and
      - (ii) use by State and local governments in managing development to reduce the risk of flooding; and
    - (B) facilitate identification and use of consistent methods of data collection and analysis by the Administrator, in conjunction with State and local governments, in developing maps for communities with similar flood risks, as determined by the Administrator; and
  - (2) publish maps in a format that is—
    - (A) digital geospatial data compliant;
    - (B) compliant with the open publishing and data exchange standards established by the Open Geospatial Consortium; and
    - (C) aligned with official data defined by the National Geodetic Survey.
- (d) Communication and outreach
- (1) In general.—The Administrator shall—
    - (A) before commencement of any mapping or map updating process, notify each community affected of the model or models that the Administrator plans to use in such process and provide an explanation of why such model or models are appropriate;
    - (B) provide each community affected a 30-day period beginning upon notification under subparagraph (A) to consult with the Administrator regarding the appropriateness, with respect to such community, of the mapping model or models to be used; provided that consultation by a community pursuant to this subparagraph shall not waive or otherwise affect any right of the community to appeal any flood hazard determinations;
    - (C) upon completion of the first Independent Data Submission, transmit a copy of such Submission to the affected community, provide the affected community a 30-day period during which the community may provide data to Administrator 1 that can be used to supplement or modify the existing data, and incorporate any data that is consistent with prevailing engineering principles;
    - (D) work with States, local communities, and property owners to identify areas and features described in subsection (b)(1)(A)(v);
    - (E) work to enhance communication and outreach to States, local communities, and property owners about the effects—
      - (i) of any potential changes to National Flood Insurance Program rate maps that may result from the mapping program required under this section; and
      - (ii) that any such changes may have on flood insurance purchase requirements;
    - (F) engage with local communities to enhance communication and outreach to the residents of such communities, including tenants (with regard to contents insurance), on the matters described under subparagraph (E);
    - (G) not less than 30 days before issuance of any preliminary map, notify the Senators for each State affected and each Member of the House of Representatives for each congressional district affected by the preliminary map in writing of—

- ~~(i) the estimated schedule for—
 
  - ~~(I) community meetings regarding the preliminary map;~~
  - ~~(II) publication of notices regarding the preliminary map in local newspapers;~~
  - ~~and~~
  - ~~(III) the commencement of the appeals process regarding the map; and~~~~
- ~~(ii) the estimated number of homes and businesses that will be affected by changes contained in the preliminary map, including how many structures will be 2 that were not previously located in an area having special flood hazards will be located within such an area under the preliminary map; and~~
- ~~(H) upon the issuance of any proposed map and any notice of an opportunity to make an appeal relating to the proposed map, notify the Senators for each State affected and each Member of the House of Representatives for each congressional district affected by the proposed map of any action taken by the Administrator with respect to the proposed map or an appeal relating to the proposed map.~~
- ~~(2) Required activities.— The communication and outreach activities required under paragraph (1) shall include—
 
  - ~~(A) notifying property owners when their properties become included in, or when they are excluded from, an area covered by the mandatory flood insurance purchase requirement under section 4012a of this title;~~
  - ~~(B) educating property owners regarding the flood risk and reduction of this risk in their community, including the continued flood risks to areas that are no longer subject to the flood insurance mandatory purchase requirement;~~
  - ~~(C) educating property owners regarding the benefits and costs of maintaining or acquiring flood insurance, including, where applicable, lower cost preferred risk policies under the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) for such properties and the contents of such properties;~~
  - ~~(D) educating property owners about flood map revisions and the process available to such owners to appeal proposed changes in flood elevations through their community, including by notifying local radio and television stations; and~~
  - ~~(E) encouraging property owners to maintain or acquire flood insurance coverage.~~~~
- ~~(e) Community remapping request.— Upon the adoption by the Administrator of any recommendation by the Technical Mapping Advisory Council for reviewing, updating, or maintaining National Flood Insurance Program rate maps in accordance with this section, a community that believes that its flood insurance rates in effect prior to adoption would be affected by the adoption of such recommendation may submit a request for an update of its rate maps, which may be considered at the Administrator's sole discretion. The Administrator shall establish a protocol for the evaluation of such community map update requests.~~
- ~~(f) Authorization of appropriations.— There is authorized to be appropriated to the Administrator to carry out this section \$400,000,000 for each of fiscal years 2013 through 2017.~~

**Sec. 100216. National Flood Hazard and Flood Risk Identification Program. (42 U.S.C. 4101b)**

- (a) Reviewing, updating, and maintaining flood hazard and flood risk information.— To further enhance the nation's understanding of flood related risk, and to facilitate the identification of areas having special flood hazard as authorized by this section and Section 1361 of P.L.90-448, the Administrator, in coordination with the Technical Mapping Advisory Council established under section 4101a of this title, shall establish an ongoing program under which the Administrator shall review, update, and maintain flood hazard and flood risk information in accordance with this section.
- (b) Flood Hazard and Flood Risk Identification.

- (1) Authority of the Administrator; grants, technical assistance, acquisition of data and use of other agency data.—In carrying out the program established under subsection (a), the Administrator—
- (A) is authorized to consult with, receive information from, and enter into any agreements or other arrangements with the Secretaries of the Army, the Interior, Agriculture, and Commerce, the Tennessee Valley Authority, and the heads of other Federal departments or agencies, on a reimbursement basis, or with the head of any State or local agency, or enter into contracts with any persons or private firms;
  - (B) is authorized, without regard to subsections (a) and (b) of section 3324 of title 31 and section 6101 of title 41, to make grants, provide technical assistance, and enter into contracts, cooperative agreements, or other transactions, on such terms deemed appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith.
  - (C) wherever necessary, is authorized to acquire new ground elevation data utilizing the most up-to-date methods and technologies in accordance with guidelines and specifications of the Federal Emergency Management Agency
  - (D) shall leverage where applicable—
    - (i) any relevant information, including information on coastal inundation, from--
      - (I) the United States Army Corps of Engineers; and
      - (II) the National Oceanic and Atmospheric Administration, including information relating to storm surge modeling;
    - (ii) any relevant information of the United States Geological Survey on stream flows, watershed characteristics, and topography that is useful in the identification of flood hazard areas, as determined by the Administrator;
    - (iii) any relevant information on land subsidence, coastal erosion areas, changing lake levels, and other flood-related hazards;
    - (iv) any relevant information or data of the National Oceanic and Atmospheric Administration and the United States Geological Survey relating to the best available science regarding future changes in sea levels, precipitation, intensity of hurricanes, or other information or data relevant to the identification of flood related hazards or risk;
    - (v) any other relevant information as may be recommended by the Technical Mapping Advisory Council; and
    - (vi) work with States, local communities, and property owners to identify areas and features described in subsection (b)(2)(E).
- (2) In general. In carrying out the program established under subsection (a), the Administrator shall identify, review, update, and maintain, and publish flood hazard and flood risk information with respect to--
- (A) all populated areas and areas of possible population growth located within the 100-year floodplain;
  - (B) all populated areas and areas of possible population growth located within the 500-year floodplain;
  - (C) areas of residual risk, including areas where flood hazards are reduced by levees, dams, other flood control structures and non-structural flood mitigation features;
  - (D) areas that could be inundated as a result of operation or the failure of a levee, dam, or other flood control structure;
  - (E) the level of flood hazard reduction provided by flood control structures and by non-structural flood mitigation features;
  - (F) all areas of the United States, for flood hazard types and additional flood frequencies deemed necessary by the Administrator; and
  - (G) in consultation with the Technical Mapping Advisory Council, future flood risk to the maximum extent feasible.



(c) Authorization of appropriations. There is authorized to be appropriated to the Administrator to carry out this section \$ 400,000,000 for each of fiscal years 2013 through 2017.