3. Establishing Financial Resilience – Allowing liquidity to quickly pay claims quickly in most situations without future detriment is important to the financial solvency of the program. The combination of NFIP resources, risk-transfer arrangements, and reasonable borrowing authority allows the NFIP to manage events up to a 1-in-20 occurrence exceedance loss level while aligning the Reserve Fund collections more closely to risk.

Legislative text:

SEC. ___. FINANCIAL RESILIENCY

(a) Repeal of Surcharge.–-Section 1308A of the National Flood Insurance Act of 1968 (42 U.S.C. 4015a) is repealed six months from the effective date of this Act.

(b) Financial Resiliency; Emergency Supplemental Appropriation; Annual Equalization Payment made by Congress. – Chapter 1 of the National Flood Insurance Act of 1968 is amended by inserting after section 1309 (42 U.S.C. 4016) the following:

"SECTION 1309A. FINANCIAL RESILIENCY.

"(a) Managing to the 1-in-20 occurrence exceedance loss level. —

"(1) In general. —Subject to the availability of appropriations under subsection (b), the Administrator shall strive to manage the national flood insurance program to the 1-in-20 occurrence exceedance loss level with a 75 percent probability of attaining financial resilience.

"(2) Tools. —In managing to the 1-in-20 occurrence exceedance loss level, the Administrator shall utilize:

"(A) funds made available to the Administrator from the National Flood Insurance Fund under section 1310 (42 U.S.C. 4017) and the National Flood Insurance Reserve Fund under section 1310A (42 U.S.C. 4017a);

"(B) any funds borrowed from the U.S. Treasury under section 1309 (42 U.S.C. 4016);

"(C) appropriations made available to the Administrator under subsection (b) of this section; and

"(D) reinsurance of coverage secured from the private reinsurance and capital markets under section 1345(e) (42 U.S.C. 4081(e)).

"(b) AUTHORIZATION OF APPROPRIATION; AVAILABILITY.—

Emergency Supplemental Appropriation.—If the Administrator finds that a flooding event will exceed the 1-in-20 occurrence exceedance loss level for the National Flood Insurance

Program, with approval of the President, the Administrator shall request an emergency supplemental appropriation, and there is authorized to be appropriated such sums as may be necessary to enable the Administrator to pay such claims and carry out the National Flood Insurance Program.

"(c) PREMIUM EQUALIZATION PAYMENT. — To achieve financial resiliency and in recognition of such reductions in chargeable premium rates mandated under certain subsections of sections 1307 (42 U.S.C. 4014) and 1308 (42 U.S.C. 4015) of this title, there is hereby appropriated to the Administrator, out of any money in the Treasury not otherwise appropriated, an amount termed "annual premium equalization payment," on October 1 of each fiscal year after enactment of this Act, which equals the difference between (1) the risk premium rate estimated under section 1307(a)(1) (42 U.S.C. 4014(a)(1)) and (2) the chargeable risk premium rate that is less than those estimated under section 1307(a)(1) (42 U.S.C. 4014(a)(1)), for deposit in the National Flood Insurance Reserve Fund under section 1310A (42 U.S.C. 4017A) of this title."

(c) Conforming Amendments.

(1) Section 1310 of the National Flood Insurance Act (42 U.S.C. 4017) is amended—
   (A) in subsection (a)(7), by striking "and";
   (B) in subsection (a)(8), by striking "." and inserting "; and";
   (C) by adding after subsection (a)(8) the following subsection: "(a)(9) for transfers to the National Flood Insurance Reserve Fund."; and
   (D) in subsection (f)—
      (i) by striking "purpose" and inserting "purposes"; and
      (ii) by striking "subsection (d)(1)" and inserting "subsections (d)(1) and (a)(9)."

(2) Section 1310A of the National Flood Insurance Act (42 U.S.C. 4017a) is amended—
   (A) in subsection (a)(2)—
      (i) in subparagraph (B), by striking "and";
      (ii) in subparagraph (C), by striking "." and inserting "; and"; and
      (iii) by inserting after subparagraph (C) the following new subparagraph: "(D) for transfers to the National Flood Insurance Fund."
   (B) by striking subsection (b) in its entirety;
   (C) in subsection (c), by striking " Maintenance of the reserve ratio." and inserting "Maintenance of the Reserve Fund.";
   (D) by redesignating subsection (c) as subsection (b);
   (E) in subsection (b) (as so redesignated)—
      (i) by striking paragraphs (1)(A) and (1)(B);

(ii) by inserting after "necessary" the following: "to manage the national flood insurance program to the 1-in-20 occurrence exceedance loss level in accordance with section 1309A(a) of this title.";

(iii) by striking paragraph (4) and inserting:

"(4) Deposit of proceeds related to risk transfer. The Administrator may deposit in the Reserve Fund any amounts collected from risk transfer claim payments pursuant to section 1345(e) (42 U.S.C. 4081(e)) in addition to the authority to deposit these amounts in the National Flood Insurance Fund pursuant to section 1310(b)(6) (42 U.S.C. 4017(b)(6)).

"(5) Credit from National Flood Insurance Fund. The Administrator shall have the authority to credit the Reserve Fund with such sums as are transferred from the National Flood Insurance Fund.";

(F) by striking subsections (d) and (e) in their entirety; and

(G) by redesignating subsection "(f)" as subsection "(c)".

(3) Section 1370(a) of the National Flood Insurance Act (42 U.S.C. 4121(a)) is amended—

(A) in paragraph (14) by striking "and" at the end;

(B) in paragraph (15) by striking the period at the end and inserting ";"; and

(C) by adding at the end the following:

"(16) the term "1-in-20 occurrence exceedance loss level" means a flood event with losses having a five percent probability of being equaled or exceeded in any given year; and

"(17) the term "financial resiliency" means at the end of a ten-year period there is a 75 percent probability of a positive net balance in the National Flood Insurance Fund and the National Flood Insurance Reserve Fund with positive net balance meaning the balance in the National Flood Insurance Fund and the National Flood Insurance Reserve Fund is on average equal to or greater than the starting balance at the beginning of the ten-year period.".

Analysis:

The National Flood Insurance Program (NFIP) manages most of its financial risk through authority to borrow from the U.S. Treasury, the repayment of which is beyond the NFIP's current capabilities. The NFIP differs from private insurance in that premiums are subject to statutorily required premium increase limitations and discounts, and the NFIP is administered by a federal agency that cannot diversify the NFIP's risks through all the means available to private insurers. This places an unsustainable debt burden on the NFIP and negatively impacts the federal flood insurance program. This will result in an unmanageable and insolvent NFIP that could lead to unpaid or delayed claims payments. This will ultimately culminate in the NFIP being ineffective in supporting FEMA's mission of providing assistance before, during, and after disasters.

FEMA is currently unable to adequately manage the risk with the available resources resulting from subsidized premium revenue and a large debt balance. Program reform is required to ensure financial stability for the NFIP to adequately and effectively provide assistance to policyholders to achieve financial security.

A fully implemented sound financial framework would increase the financial resiliency up to a defined benchmark using policyholder premiums, reinsurance, Congressional Equalization, and borrowing authority consistent with the program's financial capabilities for repayment. This proposal seeks to establish a financial framework for the NFIP with clearly defined and measurable metrics. NFIP financial resiliency is defined by evaluating the expected balances of the National Flood Insurance Fund (NFIF) and the National Flood Insurance Reserve Fund (Reserve Fund) at the end of a 10-year period where there is a 75 percent chance of beginning and ending the 10-year period with a net positive balance in the NFIP's available funds.

There are three key aspects to "Establishing Financial Resilience." First, establishing an upper limit for the size of event the NFIP can manage; second, ensuring adequate claims liquidity; and third, rethinking the reserve fund.

I. *Defining an Upper Limit*

The proposal revises the statute to require the Administrator to strive to manage the NFIP to the 1-in-20 occurrence exceedance loss level. The Administrator would utilize the following to manage to the 1-in-20 occurrence exceedance loss level: the NFIF, Reserve Fund, annual Congressional Equalization Payments (discussed below), reinsurance, and any other funds made available to the Administrator through appropriations or otherwise for carrying out the flood insurance program. It is crucial to demark the 1-in-20 occurrence exceedance loss level as the benchmark for the NFIP's total financial capabilities and defining financial resilience. There is no limit on the loss a flooding event can cause. The 1-in-20 target loss level provides the NFIP and its stakeholders the upper limit of an event the NFIP is capable of managing based on financial position.

If the Administrator finds that a flooding event will exceed the flood insurance program's 1-in-20 occurrence exceedance loss level, this proposal would require the Administrator to notify Congress and request an emergency supplemental appropriation.

.

II. *Ensuring Adequate Claims Liquidity*

To enable the program to have claims liquidity that is adequate to achieve the definition of Financial Resiliency, this proposal includes the following:

1) Cancellation of the existing NFIP debt.
2) Elimination of interest on current and future debt while also decreasing the NFIP's borrowing authority to 2/3 collection intake (approximately $3 billion).
    a. The successful implementation of this proposal is contingent on cancellation of all the NFIP's current debt.
3) Institution of Annual Congressional Equalization Payments that are calculated to ensure funding is sufficient to achieve the defined Financial Resiliency.
    a. When the Administrator first carried out the NFIP under Part A of the National Flood Insurance Act of 1968 (NFIA), Congress recognized there would be a shortfall in the collection of premiums between the estimated full risk premium rates and the discounts provided by law. As a result, Congress established a mechanism for FEMA to infuse into the flood insurance pool a premium equalization payment. When the Administrator decided to run the NFIP under Part B of the NFIA, there was no mechanism utilized that would infuse FEMA with funds to make up this same shortfall in revenue. As a result, this proposal would revise the statute to require Congress to make annual equalization payments to the Administrator for deposit in the NFIF to achieve financial resiliency, and in recognition of the discounts and annual limitations on premium increases required by statute.

b. The definition of "financial resiliency," as discussed above, will be added to the statute.

III. *Rethinking the Reserve Fund*

- The proposal envisions that by policy FEMA would establish an appropriate level of NFIF Cash-on-Hand, and a trigger for activating the Reserve Fund to pay claims.
  - The ability to carry out this item is contingent upon adoption of the "Transfer Between the NFIF and Reserve Fund" reform proposal, which requires statutory changes.
  - By analyzing the level of funds needed to cover incurred obligations, claims and claims expenses and a reasonable margin established by leadership, an appropriate level of funding within the NFIF is established.
  - The remaining balance would then be transferred to the Reserve Fund in order to maximize investment revenue by investing in U.S. Treasury securities. This process would not be mandated by law.
- Manage the Reserve Fund to the 1-in-20 occurrence exceedance loss level.
  - This proposal would revise the statute to remove the reserve fund ratio and phase-in requirement. The proposal would also eliminate the Reserve Fund Quarterly Report since the reserve fund ratio and phase-in requirement would no longer be required.
- Align Reserve Fund Collections to Flood Risk
  - The proposal would revise the statute to repeal the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA) Surcharge. The HFIAA Surcharge was created as a budgetary stop-gap for the foregone revenues from changes passed in HFIAA. The HFIAA Surcharges of $25 and $250 is a flat surcharge and does not align to a policyholder's flood risk or underlying premium. This proposal recommends the elimination of the HFIAA Surcharge.
  - FEMA would make up for the lost HFIAA Surcharge collection through the Reserve Fund Assessment, which would result in a more equitable collection as the assessment is based on risk and is not flat. The Reserve Fund Assessment is based on a percentage of the underlying premium. For 2022, the reserve fund assessment is 18% of the underlying premium. This means an increase in the Reserve Fund Assessment to make up for the lost HFIAA Surcharge will be more equitable as it will be based on the flood risk to the property and the underlying premium.

Comparative type:

National Flood Insurance Act of 1968

* * * *

~~**Section 1308A. Premium surcharge. 42 U.S.C. 4015a.**~~

~~(a) Imposition and collection. The Administrator shall impose and collect an annual surcharge, in the amount provided in subsection (b), on all policies for flood insurance coverage under the National Flood Insurance Program that are newly issued or renewed after March 21, 2014. Such surcharge shall be in addition to the surcharge under section 4011(b) of this title and any other assessments and surcharges applied to such coverage.~~

~~(b) Amount. The amount of the surcharge under subsection (a) shall be-~~

~~(1) $25, except as provided in paragraph (2); and~~

~~(2) $250, in the case of a policy for any property that is-~~

~~(A) a non-residential property; or~~

~~(B) a residential property that is not the primary residence of an individual.~~

~~(c) Termination. Subsections (a) and (b) shall cease to apply on the date on which the chargeable risk premium rate for flood insurance under this chapter for each property covered by flood insurance under this chapter, other than properties for which premiums are calculated under subsection (e) or (f) of section 4014 of this title or section 4056 of this title or under section 100230 of the Biggert-Waters Flood Insurance Reform Act of 2012 (42 U.S.C. 4014 note), is not less than the applicable estimated risk premium rate under section 4014(a)(1) of this title for such property.~~

* * * *

SECTION 1309A. FINANCIAL RESILIENCY. (42 U.S.C.)

(a) Managing to the 1-in-20 occurrence exceedance loss level. —

(1) In general. —Subject to the availability of appropriations under subsection (b), the Administrator shall strive to manage the national flood insurance program to the 1-in-20 occurrence exceedance loss level with a 75 percent probability of attaining financial resilience.

(2) Tools. —In managing to the 1-in-20 occurrence exceedance loss level, the Administrator shall utilize:

(A) funds made available to the Administrator from the National Flood Insurance Fund under section 1310 (42 U.S.C. 4017) and the National Flood Insurance Reserve Fund under section 1310A (42 U.S.C. 4017A);

(B) any funds borrowed from the U.S. Treasury under section 1309 (42 U.S.C. 4016);

(C) appropriations made available to the Administrator under subsection (b) of this section;

(D) reinsurance of coverage secured from the private reinsurance and capital markets under section 1345(e) (42 U.S.C. 4081(e).

(b) AUTHORIZATION OF APPROPRIATION; AVAILABILITY.—

Emergency Supplemental Appropriation.—If the Administrator finds that a flooding event will exceed the 1-in-20 occurrence exceedance loss level for the National Flood Insurance Program, with approval of the President, the Administrator shall request an emergency supplemental appropriation, and there is authorized to be appropriated such sums as may be necessary to enable the Administrator to pay such claims and carry out the National Flood Insurance Program.

(c) PREMIUM EQUALIZATION PAYMENT.— To achieve financial resiliency and in recognition of such reductions in chargeable premiums rates mandated under certain subsections of sections 1307 (42 U.S.C. 4014) and 1308 (42 U.S.C. 4015) of this title, there is hereby appropriated to the Administrator, out of any money in the Treasury not otherwise appropriated, an amount termed "annual premium equalization payment," on October 1 of each fiscal year after enactment of this Act, which equals the difference between (1) the risk premium rate estimated under section 1307(a)(1) (42 U.S.C. 4014(a)(1)) and (2) the chargeable risk premium rate that is less than those estimated under section 1307(a)(1) (42 U.S.C. 4014(a)(1)), for deposit in the National Flood Insurance Reserve Fund under section 1310A (42 U.S.C. 4017A) of this title.

SEC. 1310. National Flood Insurance Fund. **(42 U.S.C. 4017)**

(a) Establishment; availability. To carry out the flood insurance program authorized by this chapter, the Administrator shall establish in the Treasury of the United States a National Flood Insurance Fund (hereinafter referred to as the "fund") which shall be an account separate from any other accounts or funds available to the Administrator and shall be available as described in subsection (f), without fiscal year limitation (except as otherwise provided in this section)—

* * * *

(7) for transfers to the National Flood Mitigation Fund, but only to the extent provided in section 4104d(b)(1) of this title; ~~and~~

(8) for carrying out section 4104(f) of this title~~.~~; and

(9) for transfers to the National Flood Insurance Reserve Fund.

* * * *

(f) Availability of funds dependent on future appropriations acts. The fund shall be available, with respect to any fiscal year beginning on or after October 1, 1981, only to the extent approved in appropriation Acts; except that the fund shall be available for the ~~purpose~~ purposes described in ~~subsection (d)(1)~~ subsections (d)(1) and (a)(9) without such approval.

* * * *

SEC. 1310A. Reserve Fund. (42 U.S.C. 4017a)

(a) Establishment of Reserve Fund. In carrying out the flood insurance program authorized by this subchapter, the Administrator shall establish in the Treasury of the United States a National Flood Insurance Reserve Fund (in this section referred to as the "Reserve Fund") which shall—

(1) be an account separate from any other accounts or funds available to the Administrator; and

(2) be available for meeting the expected future obligations of the flood insurance program, including-

(A) the payment of claims;

(B) claims adjustment expenses;~~ and~~

(C) the repayment of amounts outstanding under any note or other obligation issued by the Administrator under section 4016(a) of this title.; and

(D) for transfers to the National Flood Insurance Fund.

~~(b) Reserve ratio. Subject to the phase-in requirements under subsection (d), the Reserve Fund shall maintain a balance equal to-~~

~~(1) 1 percent of the sum of the total potential loss exposure of all outstanding flood insurance policies in force in the prior fiscal year; or~~

~~(2) such higher percentage as the Administrator determines to be appropriate, taking into consideration any circumstance that may raise a significant risk of substantial future losses to the Reserve Fund.~~

~~(c) Maintenance of reserve ratio.~~

(b) Maintenance of Reserve Fund.

(1) In general. The Administrator shall have the authority to establish, increase, or decrease the amount of aggregate annual insurance premiums to be collected for any fiscal year necessary to manage the national flood insurance program to the 1-in-20 occurrence exceedance loss level in accordance with section 1309A(a) (42 U.S.C. 4016A(a)) of this title.

~~(A) to maintain the reserve ratio required under subsection (b); and~~

~~(B) to achieve such reserve ratio, if the actual balance of such reserve is below the amount required under subsection (b).~~

* * * *

~~(4) Deposit of premium surcharges. The Administrator shall deposit in the Reserve Fund any surcharges collected pursuant to section 4015a of this title.~~

(4) Deposit of proceeds related to risk transfer. The Administrator may deposit in the Reserve Fund any amounts collected from risk transfer claim payments pursuant to section 1345(e) (42 U.S.C. 4081(e)) in addition to the authority to deposit these amounts in the National Flood Insurance Fund pursuant to section 1310(b)(6) (42 U.S.C. 4017(b)(6)).

(5) Credit from National Flood Insurance Fund. The Administrator shall have the authority to credit the Reserve Fund with such sums as are transferred from the National Flood Insurance Fund.

~~(d) Phase-in requirements. The phase-in requirements under this subsection are as follows:~~

~~(1) In general. Beginning in fiscal year 2013 and not ending until the fiscal year in which the ratio required under subsection (b) is achieved, in each such fiscal year the Administrator shall place in the Reserve Fund an amount equal to not less than 7.5 percent of the reserve ratio required under subsection (b).~~

~~(2) Amount satisfied. As soon as the ratio required under subsection (b) is achieved, and except as provided in paragraph (3), the Administrator shall not be required to set aside any amounts for the Reserve Fund.~~

~~(3) Exception. If at any time after the ratio required under subsection (b) is achieved, the Reserve Fund falls below the required ratio under subsection (b), the Administrator shall place in the Reserve Fund for that fiscal year an amount equal to not less than 7.5 percent of the reserve ratio required under subsection (b).~~

~~(e) Limitation on reserve ratio. In any given fiscal year, if the Administrator determines that the reserve ratio required under subsection (b) cannot be achieved, the Administrator shall submit, on a calendar quarterly basis, a report to Congress that-~~

~~(1) describes and details the specific concerns of the Administrator regarding the consequences of the reserve ratio not being achieved;~~

~~(2) demonstrates how such consequences would harm the long-term financial soundness of the flood insurance program; and~~

~~(3) indicates the maximum attainable reserve ratio for that particular fiscal year.~~

~~(f)~~(c) Investment. The Secretary of the Treasury shall invest such amounts of the Reserve Fund as the Secretary determines advisable in obligations issued or guaranteed by the United States.

* * * *

SEC. 1370(a). Definitions. (42 U.S.C. 4121)

(a) As used in this chapter-

* * * *

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

(15) the term "substantially damaged structure" means a structure covered by a contract for flood insurance that has incurred damage for which the cost of repair exceeds an amount specified in any regulation promulgated by the Administrator, or by a community ordinance, whichever is lower~~.~~;

(16) the term “1-in-20 occurrence exceedance loss level” means a flood event with losses having a five percent probability of being equaled or exceeded in any given year; and

(17) the term “financial resiliency” means at the end of a ten-year period there is a 75 percent probability of a positive net balance in the National Flood Insurance Fund and the National Flood Insurance Reserve Fund with positive net balance meaning the balance in the National Flood Insurance Fund and the National Flood Insurance Reserve Fund is on average equal to or greater than the starting balance at the beginning of the ten-year period.

* * * *