

Proposal 10: Excessive Loss Properties – Creates a new category of Excessive Loss Properties (XLP), defined as structures with four or more paid losses of at least \$10,000 each, and prevents FEMA from offering coverage for XLPs. Allows a structure to be removed from an XLP classification if the structure is mitigated in line with state and local requirements. Updates the definitions of Repetitive Loss Structures and Severe Repetitive Loss Structures.

Legislative text:

SEC. ____ . MULTIPLE LOSS PROPERTIES.

(a) ELIMINATION OF COVERAGE FOR PROPERTIES WITH EXCESSIVE CLAIMS.—Chapter II of the National Flood Insurance Act of 1968 (42 U.S.C. 4011 et seq.) is amended by adding at the end the following:

“SEC. 1323. ELIMINATION OF COVERAGE FOR PROPERTIES WITH EXCESSIVE CLAIMS.

“(a) IN GENERAL.— Except as provided pursuant to subsection (b), no new or renewal of coverage may be provided under this title to any property that becomes an excessive loss property as defined under section 1370 (42 U.S.C. 4121) due to losses occurring after the effective date of this Act.

“(b) EXCEPTION FOR NEWLY DECLARED PROPERTIES.—The Administrator may renew flood insurance policies made available under this title for one year following the occurrence of the fourth claim qualifying a property as an excessive loss property.

“(c) NOTIFICATION.—No later than 30 days after the occurrence of the fourth claim qualifying a property as an excessive loss property, the Administrator shall notify the policyholder insuring the property that—

“(1) the property qualifies as an excessive loss property; and

“(2) excessive loss properties are not entitled to purchase or renew flood insurance under this title, except as permitted under subsection (b).”.

(b) The National Flood Insurance Act is amended—

(1) in section 1370(a) of the National Flood Insurance Act of 1968 (42 U.S.C. 4121)—

(A) by redesignating paragraphs (8) through (15) as paragraphs (10) through (17), respectively; and

(B) by striking paragraph (7) and inserting the following new paragraphs after paragraph (6):

“(7) the term ‘repetitive loss property’ means a structure that has incurred flood-related damage for which 2 or more separate claims payments of any amount in excess of the loss-deductible for damage to the covered structure have been made under flood

insurance coverage under this title;

“(8) the term ‘severe repetitive loss property’ means a structure that has incurred flood- related damage for which—

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

“(B) at least 2 separate claims payments have been made under flood insurance coverage under this title, with the cumulative amount of such claims payments exceeding the value of the structure;

“(9) the term ‘excessive loss property’ means a structure that has incurred flood damage for which at least four separate claims have been made under flood insurance coverage under this title, with each claim receiving an aggregate payment of at least \$10,000 and occurring after the date of enactment of this section. Once an excessive loss property has been mitigated to protect against flood either by bringing the building into compliance with local and state floodplain ordinances or through flood mitigation measures that meaningfully reduces flood risk, the Administrator may not consider claims that occurred before the mitigation of a structure for purposes of determining a structure’s continued status as an excessive loss property. Nothing in this definition shall be interpreted to prohibit the Administrator from considering claims that occur after the mitigation to the structure to determine if a structure subsequently meets the definition of a multiple loss property.”

(2) in section 1304(b)(1) (42 U.S.C. 4011(b)(1)), by striking “repetitive loss structures” and inserting “repetitive loss properties”;

(3) in section 1307 (42 U.S.C. 4014), by striking subsection (h);

(4) in section 1315(a)(2)(A)(i) (42 U.S.C. 4022(a)(2)(A)(i)), by striking “repetitive loss structure” and inserting “repetitive loss property”; and

(5) in section 1366 (42 U.S.C. 4104c)—

(A) in subsection (a)(2), by striking “severe repetitive loss structures” and inserting “severe repetitive loss properties”;

(B) in subsection (c)(2)(A)(ii), by striking “severe repetitive loss

structures” and inserting “severe repetitive loss properties and repetitive loss properties”;

(C) in subsection (d)—

(i) in paragraph (1)—

(I) in the paragraph heading, by striking “Severe repetitive loss structures” and inserting “Severe repetitive loss properties”;

and

(II) in the matter preceding subparagraph (A), by striking “severe repetitive loss structures” and inserting “severe repetitive loss properties”; and

(ii) in paragraph (2)—

(I) in the paragraph heading, by striking “Repetitive loss structures” and inserting “Repetitive loss properties”; and

(II) by striking “repetitive loss structures” and inserting “repetitive loss properties”; and

(D) by striking subsection (h) and adding the following:

“(h) Definition of community.— For purposes of this section, the term “community” means—

“(1) a political subdivision that—

“(A) has zoning and building code jurisdiction over a particular area having special flood hazards; and

“(B) is participating in the national flood insurance program; or

“(2) a political subdivision of a State, or other authority, that is designated by political subdivisions, all of which meet the requirements of paragraph (1), to administer grants for mitigation activities for such political subdivisions.”.

Analysis:

The National Flood Insurance Program (NFIP) is the primary source of flood insurance coverage for residential properties in the United States, with more than five million policies in more than 22,000 communities across the country. The NFIP was established by the National Flood Insurance Act of 1968 with the general purpose of offering primary flood insurance to properties with significant flood risk and reducing flood risk through the adoption of floodplain management standards.

Following unsuccessful efforts by insurance companies to create and sustain a private

flood insurance market, the NFIP was created to provide insurance to property owners to speed recovery

from flood events. In the history of the NFIP, FEMA has never denied flood insurance coverage to any eligible structure. Recognizing that certain structures may (1) pose potential life-safety concerns, (2) negatively impact the financial soundness of the program, or (3) conflict with the goals of the NFIP to preserve natural and beneficial functions of the floodplains, FEMA requests a statutory change to permit it to deny flood insurance coverage to certain structures.

In the private sector, industry chooses which properties to extend insurance coverage based on their operating business model. While there are some limitations based on state regulation, private carriers have discretion about what risks they assume and frequently choose to not renew coverage on the riskiest policies on their books. Because previous losses are a significant indicator of risk level, carriers non-renew policies that have a claim, particularly in catastrophic lines.

Unlike private industry, FEMA has never denied flood insurance coverage to any eligible structure. Since 1978, nearly 100,000 structures have had two or more paid losses; nearly 1,000 have suffered 10 or more losses. As of December 2021, FEMA has paid \$35.1 billion in claims to properties with two or more losses compared to the total of \$73.4 billion paid on all claims. In the past thirty years, one of every six dollars paid out in claims has gone to a building with a history of multiple floods.

The risk posed by multiple loss properties has a broader impact on the nation as well. Families living in areas that repeatedly flood face life, health, and safety issues. The NFIP has been criticized that making flood insurance available leads to unwise decisions in the floodplain. The availability of flood insurance creates a moral hazard with downstream repercussions on the natural and beneficial functions of floodplains and exacerbating flood problems downstream. The NFIP must have better tools to address insured structures that have experienced multiple flood claims.

Future State

FEMA proposes that the NFIP have an objective threshold to deny coverage to the most egregiously flood prone structures. This proposal, named “Excessive Loss Properties (XLP)”, would, through selective underwriting, reduce the disaster suffering caused by repetitive floods, discourage rebuilding in areas with a history of untamed flooding without taking appropriate flood mitigation measures, and reduce financial risk to the NFIP while ensuring that coverage is still widely available to individuals and businesses who might not be eligible for private market coverage. This proposal does not address all the issues associated with properties with multiple losses; however, it is a first step towards a holistic solution to reduce repeated disaster suffering.

Proposal Details

FEMA proposes statutory changes to limit coverage to XLPs. These changes, outlined below, prevent FEMA from offering coverage to structures with four or more paid losses following enactment of the act, include a “grace period” period to allow an additional year of coverage after a disqualifying loss, sets a loss threshold of \$10,000 to be considered a qualifying loss because FEMA has not historically provided “deterrents” for making small claims, and allows a structure to be removed from an XLP classification if the structure is mitigated in line with state and local requirements.

- **Simplifies definition of Repetitive Loss and Severe Repetitive Loss Properties**

The proposal would enable the NFIP to more effectively identify multiple loss properties by updating the definitions of repetitive loss and severe repetitive loss properties. The proposal establishes standardized definitions of “repetitive-loss property” and “severe

repetitive-loss property.” These terms have been used inconsistently in statute and regulation. This proposal would standardize them across the NFIP.

These designations primarily affect mitigation grant prioritization and cost share allowances. FEMA Hazard Mitigation Assistance (HMA) grants - which include the Hazard Mitigation Grant Program (HMGP), the Pre-Disaster Mitigation (PDM) grant program, and the Flood Mitigation Assistance (FMA) grant programs – typically require a 25% cost share match to 75% federal share for all awards. However, under the FMA program, mitigation projects for

SRL designated properties receive a 100% federal cost share and RL designated properties require a 10% cost match to 90% federal share. The enhanced federal cost shares for SRL and RL properties dramatically reduces the funding burden on communities and homeowners in carrying out mitigation through the FMA grant program. Further, SRL and RL properties that make up more than 50% of the properties in a submitted FMA project are prioritized so are more likely to be funded during the annual cycle of the program. In addition to the FMA program there have been some instances of the SRL designation impacting insurance rates. In 2019, FEMA implemented an additional premium on SRL properties. The triggers for both the SRL and RL designations are complicated.

This proposal creates the XLP designation based on four paid losses exceeding \$10,000. Four losses would give policyholders ample information about their risk and the importance of mitigation and would have placed the property on the RL or SRL list and given them additional mitigation opportunities. With data as of July 31, 2019, approximately 20,000 properties would be designated as excessive loss properties.

- **Prevents FEMA from Offering Coverage to XLPs**

The heart of the proposal, once a property is labeled as an excessive loss property, FEMA is prohibited from offering these properties insurance coverage.

- **Implementation and Grace Period**

A property’s past claim/loss history would be “grandfathered” and not count towards the XLP status. Only qualifying losses after enactment of the statute would be considered. This would allow existing policyholders ample time to consider appropriate mitigation measures and to truly understand not only the flood risk they face but also their potential future financial risk.

A grace period upon the fourth qualifying loss that triggers the XLP designation would ensure that policyholders do not suddenly and unexpectedly bear flood risk. This would allow for one final policy term after the completion of their present term.

- **Sets a Qualifying Threshold of \$10,000 per-loss**

This proposal includes a \$10,000 per-loss as the minimum threshold for a qualifying loss as an XLP. This is considered a nominal value—the average payment for properties with four losses is \$35,700—but is in place because FEMA has not historically provided any disincentives (such as increased premiums, surcharges, or dropped coverage) for filing a claim. This threshold reduces the penalty for previous dollar trading activities.

- **Removal of XLP Status Upon Mitigation**

The proposal also includes a provision to allow structures to drop the XLP designation if they are made compliant with state and local floodplain management requirements. This is the same as RL and SRL designations. If a structure is mitigated to floodplain management standards, they are able to remove the XLP designation and receive NFIP coverage until such time as they receive another four qualifying losses.

Comparative type:

NATIONAL FLOOD INSURANCE ACT OF 1969

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SUBCHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

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SEC. 1304. AUTHORIZATION TO ESTABLISH AND CARRY OUT PROGRAM. (42 U.S.C. 4011)

(a) * * * * *

(b) Additional Coverage for Compliance with Land Use and Control Measures.—The national flood insurance program established pursuant to subsection (a) shall enable the purchase of insurance to cover the cost of implementing measures that are consistent with land use and control measures established by the community under section 4102 of this title for—

(1) properties that are [**repetitive loss structures**] **repetitive loss properties**;

(2)-(4) * * * * *

(c) * * * * *

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SEC. 1307. ESTIMATES OF PREMIUM RATES. (42 U.S.C. 4014)

(a)-(g) * * * * *

[(h) DEFINITION.--In this section, the term "severe repetitive loss property" has the following meaning:

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

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

(B) has incurred flood-related damage—

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

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

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

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SEC. 1315. State and Local Land Use Controls. (42 U.S.C. 4022)

(a) REQUIREMENT FOR PARTICIPATION IN FLOOD INSURANCE PROGRAM.—

(1) * * * * *

(2) AGRICULTURAL STRUCTURES.—

(A) ACTIVITY RESTRICTIONS.--Notwithstanding any other provision of law,

the adequate land use and control measures required to be adopted in an area (or subdivision thereof) pursuant to paragraph (1) may provide, at the discretion of the appropriate State or local authority, for the repair and restoration to predamaged conditions of an agricultural structure that--

(i) is a [repetitive loss structure] repetitive loss property; or

(ii) * * * * *

(B)-(D) * * * * *

(b)-(c) * * * * *

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SEC. 1323. ELIMINATION OF COVERAGE FOR PROPERTIES WITH EXCESSIVE CLAIMS.

(a) IN GENERAL.— Except as provided pursuant to subsection (b), no new or renewal of coverage may be provided under this title to any property that becomes an excessive loss property as defined under section 1370 (42 U.S.C. 4121) due to losses occurring after the effective date of this Act.

(b) EXCEPTION FOR NEWLY DECLARED PROPERTIES.—The Administrator may renew flood insurance policies made available under this title for one year following the occurrence of the fourth claim qualifying a property as an excessive loss property.

(c) NOTIFICATION.—No later than 30 days after the occurrence of the fourth claim qualifying a property as an excessive loss property, the Administrator shall notify the policyholder insuring the property that—

(1) the property qualifies as an excessive loss property; and

(2) excessive loss properties are not entitled to purchase or renew flood insurance under this title, except as permitted under subsection (b).

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SUBCHAPTER IV—GENERAL PROVISIONS

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SEC. 1370. DEFINITIONS. (42 U.S.C. 4121)

(a) As used in this chapter--

(1) the term "flood" shall have such meaning as may be prescribed in regulations of the Administrator, and may include inundation from rising waters or from the overflow of streams, rivers, or other bodies of water, or from tidal surges, abnormally high tidal water, tidal waves, tsunamis, hurricanes, or other severe storms or deluge;

(2) the terms "United States" (when used in a geographic sense) and "State" includes the several States, the District of Columbia, the territories and possessions, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands;

(3) the terms "insurance company", "other insurer" and "insurance agent or broker" include any organization or person that is authorized to engage in the business of insurance under the laws of any State, subject to the reporting requirements of the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] pursuant to section 13(a) or 15(d) of such Act (15 U.S.C. 78m(a) and 78o(d)), or authorized by the Administrator to assume reinsurance on risks insured by the flood insurance program;

(4) the term "insurance adjustment organization" includes any organizations and

persons engaged in the business of adjusting loss claims arising under insurance policies issued by any insurance company or other insurer;

(5) the term "person" includes any individual or group of individuals, corporation, partnership, association, or any other organized group of persons, including State and local governments and agencies thereof;

(6) the term "Administrator" means the Administrator of the Federal Emergency Management Agency;

[(7) the term "repetitive loss structure" means a structure covered by a contract for flood insurance that—

(A) has incurred flood-related damage on 2 occasions, in which the cost of repair, on the average, equaled or exceeded 25 percent of the value of the structure at the time of each such flood event; and

(B) at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.]

(7) the term 'repetitive loss property' means a structure that has incurred flood-related damage for which 2 or more separate claims payments of any amount in excess of the loss- deductible for damage to the covered structure have been made under flood insurance coverage under this title;

(8) the term 'severe repetitive loss property' means a structure that has incurred flood-related damage for which—

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

(B) at least 2 separate claims payments have been made under flood insurance coverage under this title, with the cumulative amount of such claims payments exceeding the value of the structure;

(9) the term 'excessive loss property' means a structure that has incurred flood damage for which at least four separate claims have been made under flood insurance coverage under this title, with each claim receiving an aggregate payment of at least \$10,000 and occurring after the date of enactment of this section. Once an excessive loss property has been mitigated to protect against flood either by bringing the building into compliance with local and state floodplain ordinances or through flood mitigation measures that meaningfully reduces flood risk, the Administrator may not consider claims that occurred before the mitigation of a structure for purposes of determining a structure's continued status as an excessive loss property. Nothing in this definition shall be interpreted to prohibit the Administrator from considering claims that occur after the mitigation to the structure to determine if a structure subsequently meets the definition of a multiple loss property.

[(8)](10) the term "Federal agency lender" means a Federal agency that makes direct loans secured by improved real estate or a mobile home, to the extent such agency acts in such capacity;

[(9)](11) the term "Federal entity for lending regulation" means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the National Credit Union Administration, and the Farm Credit Administration, and with respect to a particular regulated lending institution means

the entity primarily responsible for the supervision of the institution;

[(10)](12) the term "improved real estate" means real estate upon which a building is located;

[(11)](13) the term "lender" means a regulated lending institution or Federal agency lender;

[(12)](14) the term "natural and beneficial floodplain functions" means-

(A) the functions associated with the natural or relatively undisturbed floodplain that (i) moderate flooding, retain flood waters, reduce erosion and sedimentation, and mitigate the effect of waves and storm surge from storms, and (ii) reduce flood related damage; and

(B) ancillary beneficial functions, including maintenance of water quality and recharge of ground water, that reduce flood related damage;

[(13)](15) the term "regulated lending institution" means any bank, savings and loan association, credit union, farm credit bank, Federal land bank association, production credit association, or similar institution subject to the supervision of a Federal entity for lending regulation;

[(14)](16) 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)](17) 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.

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SEC. 1366. MITIGATION ASSISTANCE (42 U.S.C. 4104c)

(a) AUTHORITY.—The Administrator shall carry out a program to provide financial assistance to States and communities, using amounts made available from the National Flood Mitigation Fund under section 4104d of this title, for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance under this chapter. Such financial assistance shall be made available—

(1) * * * * *

(2) to states and communities in the form of grants under this section for carrying out mitigation activities that reduce flood damage to **[severe repetitive loss structures]** **severe repetitive loss properties**; and

(3) * * * * *

(b) * * * * *

(c) ELIGIBLE MITIGATION ACTIVITIES.

(1) * * * * *

(2) REQUIREMENTS OF TECHNICAL FEASIBILITY, COST EFFECTIVENESS, AND INTEREST OF NATIONAL FLOOD INSURANCE FUND.—

(A) IN GENERAL.—The Administrator may approve only mitigation

activities that the Administrator determines—

- (i) are technically feasible and cost-effective; or
- (ii) will eliminate future payments from the National Flood Insurance Fund for **[severe repetitive loss structures] severe repetitive loss properties** through an acquisition or relocation activity.

(B)-(J) * * * * *

(3)-(4) * * * * *

(d) **MATCHING REQUIREMENT.**—The Administrator may provide grants for eligible mitigation activities as follows:

(1) **[SEVERE REPETITIVE LOSS STRUCTURES.]—SEVERE REPETITIVE LOSS PROPERTIES.**—In the case of mitigation activities to **[severe repetitive loss structures] severe repetitive loss properties**, in an amount up to—

(A)-(B) * * * * *

(2) **[REPETITIVE LOSS STRUCTURES.]—REPETITIVE LOSS PROPERTIES.**—In the case of mitigation activities to **[repetitive loss structures] repetitive loss properties**, in an amount up to 90 percent of eligible costs.

(3) * * * * *

(e)-(g) * * * * *

[(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) COMMUNITY.—The term “community” means—

(A) a political subdivision that—

- (i) has zoning and building code jurisdiction over a particular area having special flood hazards; and**
- (ii) is participating in the national flood insurance program; or**

(B) a political subdivision of a State, or other authority, that is designated by political subdivisions, all of which meet the requirements of subparagraph (A), to administer grants for mitigation activities for such political subdivisions.

(2) REPETITIVE LOSS STRUCTURE.—The term “repetitive loss structure” has the meaning given such term in section 4121 of this title.

(3) SEVERE REPETITIVE LOSS STRUCTURE.—The term “severe repetitive loss structure” means a structure that—

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

(B) has incurred flood-related damage—

- (i) for which 4 or more separate claims payments have been made under flood insurance coverage under this chapter, with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; Or**
- (ii) for which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the value of the insured structure.]**

(h) DEFINITION OF COMMUNITY.—For purposes of this section, the term “community” means—

(1) A political subdivision that—

(A) has zoning and building code jurisdiction over a particular area

having special flood hazards; and

(B) is participating in the national flood insurance program; or

(2) a political subdivision of a State, or other authority, that is designated by political subdivisions, all of which meet the requirements of paragraph (1), to administer grants for mitigation activities for such political subdivisions.

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