

CRS Report for Congress

Side-by-Side Comparison of Flood Insurance Reform Legislation in the 110th Congress

Updated June 24, 2008

Rawle O. King
Analyst in Financial Economics and Risk Assessment
Government and Finance Division



Prepared for Members and
Committees of Congress

Side-by-Side Comparison of Flood Insurance Reform Legislation in the 110th Congress

Summary

In 1968, Congress established the National Flood Insurance Program (NFIP) in response to severe flooding following a series of hurricanes in 1963, 1964, and 1965. The key policy objectives of the NFIP were threefold: (1) reduce the nation's flood risk through floodplain management; (2) improve flood hazard data and risk assessment by mapping the nation's floodplains; and (3) make affordable flood insurance widely available in communities that adopt and enforce measures to make future construction safer from flooding. Fiscally, the program had been self-supporting from the mid-1980s until the 2005 hurricanes. These storms exposed serious weaknesses, which Congress is attempting to address in an effort to return the NFIP to financial soundness.

In the aftermath of the 2005 hurricanes, the NFIP faced unprecedented financial and regulatory strains. The program had to borrow \$17.535 billion from the U.S. Treasury in order to pay claims and expenses. Those concerned about program challenges in the wake of the 2005 storms cite the increasing need to borrow from the U.S. Treasury, substantial premium discounts or cross-subsidies among classes of policyholders, outdated flood insurance rate maps, allegations of uneven compliance with mandatory purchase requirements, and questions as to the performance and efficiency of private insurers operating under the NFIP's Write Your Own program.

Policymakers are now examining ways to strengthen the NFIP. On July 19, 2007, Representative Maxine Waters introduced H.R. 3121 to restore the financial solvency of the national flood insurance program. Chairman Barney Frank had introduced H.R. 1682, an earlier version of H.R. 3121, on March 26, 2007. H.R. 3121 is designed to make the program satisfy traditional criteria for actuarial soundness by phasing in actuarial premiums for owners of certain commercial properties and some residential properties that are not the owners' primary residence. H.R. 3121 would also: (1) raise civil penalties on federally regulated lenders who fail to enforce mandatory purchase of flood insurance for mortgage holders; (2) increase program participation incentives; (3) add coverage for wind as well as water damage; and (4) encourage revisions to flood maps. H.R. 3121 passed the House on September 27, 2007.

On May 13, 2008, the Senate approved S. 2284, a flood insurance reform bill designed to increase the amount of premiums collected to meet the cost of expected claims under the NFIP. S. 2284 is substantially similar to H.R. 3121, except that the Senate legislation would forgive the program's outstanding debt to the Treasury and exclude coverage for wind damages.

Some stakeholder groups have expressed concerns about making abrupt changes to the NFIP, particularly phasing out the subsidized premiums. They point to a need for flood insurance reform but say changes should be made in the broader context of program reauthorization. NFIP authority expires September 30, 2008.

This report will be updated as events warrant.

Contents

Background	1
Summary of H.R. 3121 and S. 2284	3

List of Tables

Table 1. Side-by-Side Comparison of Flood Insurance Reform Legislation: H.R. 3121 and S. 2284	4
--	---

Side-by-Side Comparison of Flood Insurance Reform Legislation in the 110th Congress

Background

In 1968, Congress established the National Flood Insurance Program (NFIP) in response to rising flood losses and as an alternative to ad hoc federal disaster assistance. The NFIP's insurance operation was self-supporting from the mid-1980s until the 2005 hurricane season when Hurricanes Katrina, Rita, and Wilma exposed serious flaws in the program. The 2005 Gulf Coast hurricanes were catastrophic disasters that required an estimated \$19.28 billion in claims payouts under the NFIP. The program now faces unprecedented financial and regulatory challenges and a \$17.535 billion debt owed to the U.S. Treasury. Members of Congress are concerned about the financial challenges facing the NFIP and the need to reauthorize the program before September 30, 2008.

An important aspect of the financial challenges facing the program involves the rebuilding of the Gulf Coast region and the adequacy of the NFIP to meet the future commercial and multifamily real estate mortgage financial needs of all other communities. Without federal flood insurance, for example, lenders will often not be able to sell mortgages in coastal areas and other regions prone to flooding. Without a reliable and uninterrupted source of affordable flood insurance, mortgage credit and home ownership would be more expensive.

The NFIP's financial status has prompted policymakers to focus on the strengths and weaknesses of the NFIP in managing and financing the nation's flood risk. Those concerned about program weaknesses typically cite the increasing need to borrow from the U.S. Treasury, substantial premium cross-subsidies among classes of policyholders, outdated flood insurance rate maps, allegations of uneven compliance with mandatory purchase requirements, and questions as to the performance and efficiency of the NFIP's Write Your Own program.

Legislative efforts are now underway in Congress to reform the NFIP. On March 26, 2007, Representative Barney Frank introduced H.R. 1682, the Flood Insurance Reform and Modernization Act of 2007, in order to restore the financial solvency of the national flood insurance program. On July 19, 2007, Representative Maxine Waters introduced H.R. 3121 — a bill that is substantially similar to H.R. 1682. As approved by the full House on September 27, 2007, H.R. 3121 would add two new sections to provide for optional wind damage coverage through the flood insurance program and to extend the NFIP five years through September 30, 2013. Section 4 of the bill was modified to reflect minor changes in the phase-in of actuarial rates beginning on January 1, 2011.

On May 13, 2008, the full Senate approved S. 2284 to reauthorize the NFIP through 2013, increase the amount of premiums collected to reduce the cost of future claims, and expand the program to address concerns brought forth after the 2004 and 2005 hurricane seasons. S. 2284 is substantially similar to H.R. 3121, except that the Senate legislation would forgive the program's \$17.5 billion in outstanding debt to the Treasury and exclude coverage for wind damages.

Some stakeholder groups have expressed concerns about making abrupt changes to the NFIP, particularly phasing out the subsidized premiums. They point to a need for flood insurance reform but say changes should be made in the broader context of program reauthorization. NFIP authority expires September 30, 2008.

Many private insurers oppose the inclusion of wind coverage, claiming the insurance industry is capable of insuring wind coverage. Opponents also stress that including the wind peril in the program would expose the program to unnecessary future indebtedness to the Treasury. Supporters insist that the federal flood insurance program lost billions due to its lack of a wind damage provision. The reason is that claim adjusters arguably attributed all damage, including obvious wind damages, to flood.

Summary of H.R. 3121 and S. 2284

H.R. 3121 is substantially similar to S. 2284 in that both bills would modify the NFIP to bring more consumers into the system and gradually phase out premium subsidies currently available for structures built prior to the mapping and implementation of NFIP floodplain management requirements — the so-called Pre-Flood Insurance Rate Maps (Pre-FIRM) structures.¹ The bills would achieve these outcomes in different ways.

Specifically, H.R. 3121 would: (1) phase out subsidized premiums for some policyholders; (2) require FEMA for the first time to map the nation's 500-year floodplain and areas that would be flooded if a dam or levee failed; (3) notify borrowers of requirements making flood insurance potentially available to all homeowners, and not just to those in the 100-year floodplain, as part of the Real Estate Settlement Procedures Act (RESPA) process; (4) provide for the purchase of optional insurance coverage for wind as well as water damage; and (5) extend the NFIP five years through September 30, 2013.

S. 2284, like H.R. 3121, would phase out the premium subsidies on pre-FIRM properties, require mapping the 500-year floodplain and areas behind levees, require borrowers to be notified about the availability of flood insurance, and extend the program through fiscal 2013. The Senate bill, however, would: (1) forgive the debt owed to the Treasury; (2) continue to exclude coverage for wind damage; (3) establish a reserve fund that maintains a balance equal to 1% of total potential loss exposure of the program to pay extraordinary future claims; (4) establish an “ombudsman” or consumer advocate within FEMA to ensure that the Write Your Own companies pay claims in an appropriate manner; and (5) create a nonpartisan commission to examine the proper approach to manage catastrophic risks.

Table 1 provides a detailed side-by-side comparison of key provisions in H.R. 3121 and S. 2284.²

¹ Pre-FIRM buildings pay heavily discounted rates on the first \$35,000 of their structure's insured value, and full risk-based premium rates for the remaining insured value.

² Both the House and Senate passed versions refer to the FEMA “Director.” In 2006, Congress enacted legislation (P.L. 109-295, 120 Stat. 1396) that identified the head of FEMA as the “Administrator.” Table 1 uses the title “Administrator.”

Table 1. Side-by-Side Comparison of Flood Insurance Reform Legislation: H.R. 3121 and S. 2284

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Title	Flood Insurance Reform and Modernization Act of 2007	Flood Insurance Reform and Modernization Act of 2007
Purpose	To protect the integrity of the NFIP by fully funding existing legal obligations and increasing (1) incentives for homeowners and communities to participate in the program and (2) awareness of both flood risks and the quality of information regarding such risks. Would also expand the NFIP to make optional wind coverage available to NFIP participants. (Sec. 2(a))	To address the program's debt to the U.S. Treasury and strengthen its financial solvency to ensure it can pay future claims. (Sec. 102)
Program Extension	Would reauthorize the NFIP five years through September 30, 2013. (Sec. 27)	Same as H.R. 3121. (Sec. 104)
Reform of Premium Rate Structure		
Increase in Annual Limitation on Premium Increases	Would authorize annual increase in NFIP premiums to be capped at 15% (up from 10%). (Sec. 11)	Would authorize annual increase in NFIP premiums to be capped at 15% (up from 10%) for most properties and 25% for properties that have lost the entitlement to subsidized rates. (Sec. 106)
Reduction of Premium Rate Subsidies	Would require the Administrator of the Federal Emergency Management Agency (FEMA) to phase-in actuarial rates for nonresidential (commercial) pre-Flood Insurance Rate Map (FIRM) properties and pre-FIRM properties that are not the primary residence of either the owner or a tenant on January 1, 2011. FEMA would be authorized to assess an additional 15% on top of routine annual rate increases for those properties until the actuarial rate is achieved. Specifies that the aggregate increase in chargeable premium rates during any 12-month period, however, may not exceed 20% for non-residential properties and 25% for non-primary residences. (Sec. 4(c)(2)(B))	Does not mention the phase-in of actuarial rates for pre-FIRM structures but, beginning 90 days after the enactment of the law, the potential to obtain less than actuarial rates is eliminated for "prospective insureds." This will apply to "prospective insureds" who are policyholders of non-residential structures, non-primary residences, severe repetitive loss properties, properties that undergo improvements or renovations exceeding 30% of the fair market value of the property, and any property that sustains damage exceeding 50% of the fair market value of the property after enactment of the bill. [See below section, "Phase-In of Rate Increases From Remapping" for 2-year phase-in of actuarial rates following the publication of new flood maps.] (Sec. 106)
Extension of Premium Rate Subsidy on New Policies or Lapsed Policies	Would require phase-in of actuarial rates on newly purchased pre-FIRM properties using the same phase-in structure that nonresidential and non-primary homes would be subject to under the legislation. (Sec. 4(b)(2)(C))	Would prohibit the Administrator from offering flood insurance to prospective insurers at less than actuarial rates if the property is not insured within 90 days of enactment of the law, the policy lapsed as a result of the deliberate choice of the policyholder or the prospective insured refused to accept an offer for mitigation assistance following a major disaster. (Sec. 106(a))

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Minimum Annual Deductible for Pre-FIRM Properties	No similar provision.	Would increase the annual deductible from \$1,000 to \$1,500 for pre-FIRM properties with coverage of less than \$100,000, and from \$1,000 to \$2,000 for pre-FIRM properties with coverage of more than \$100,000. Minimum post-FIRM property deductibles would increase from \$500 to \$750 for coverage less than \$100,000 and from \$500 to \$1,000 for coverage greater than \$100,000. (Sec. 113)
5-Year Discount of Flood Insurance Rates for Properties in Formerly Protected Areas	Would clarify that people forced to purchase flood insurance as a result of new flood insurance rate maps who have lived in an area where the levees were previously certified, and have now been decertified, will receive a grace period of five years in which they will be entitled to a 50% reduction in insurance premiums while the levees are being recertified. (Sec. 22(e))	No similar provision.
Phase-In of Rate Increases From Remapping	Would require NFIP to provide a 5-year phase-in of flood insurance premiums for newly covered low-cost properties placed within a floodplain through an updating of the flood insurance rate maps if the value of the home does not exceed 75% of the state median home value. (Sec. 22(f))	Would require that owners of properties mapped into the 100-year flood plain must pay rates that accurately reflect the current risk of flood to such properties. Properties covered by flood insurance at the time of remapping will have the new rates phased in over a two year period at the rate of 50% per year. The practical application of this provision would be a prohibition against NFIP's current practice of allowing properties that are mapped into the 100-year flood plain to indefinitely pay rates that reflect their old risk level. Would also prohibit the Administrator from adjusting the chargeable premium rate for properties in all areas located in the St. Louis District of the Mission Valley Division of the U.S. Army Corp of Engineers. (Sec. 108)
Considerations in Determining Chargeable Premium	No similar provision.	Would require NFIP to use actuarial principles in determining rates, and to consider catastrophic loss years in the calculation of historical annual obligations of the NFIP. (Sec. 114)
Mandatory Purchase Requirements		
Expansion of Mandatory Coverage Requirement to State Regulated Lending Institution	Would require the Government Accountability Office (GAO) to conduct a study of the impact of amending the Flood Disaster Protection Act of 1973 to extend NFIP's mandatory purchase requirements to properties in special flood hazard areas (SFHA) that are covered by a mortgage loan issued by a non-federally regulated lending institution. (Sec. 3(a)(2))	Would require that state chartered lending institutions must be subject to regulations by that state that are consistent with the NFIP's mandatory flood insurance purchase requirements. (Sec. 109)

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Grants for Outreach to Property Owners and Renters	Would authorize \$50 million for each of fiscal years 2008 through 2012 for FEMA to make grants to local government agencies for outreach activities designed to encourage and facilitate the purchase of flood insurance. Local governments would use the grants to notify owners and renters about SFHA and the mandatory purchase requirement, and educate such owners and renters regarding the flood risk and the benefits and costs of maintaining or acquiring flood insurance. FEMA would be required to submit a report to Congress identifying and describing the marketing and outreach efforts under the NFIP. (Sec. 15(a))	No similar provision.
Notification to Tenants of Availability of Contents Insurance	Would require the FEMA Administrator to notify tenants of the availability of contents insurance and where to obtain coverage. Sets out contents of the notice. (Sec. 10)	No similar provision.
Notice of Flood Insurance Availability Under RESPA's Good Faith Estimate	Would amend Section 5(b) of the Real Estate Settlement Procedures Act of 1974 (RESPA) to create a new notice provision to ensure that individuals who purchase homes in areas of elevated flood risk (whether or not the property is located in a special flood hazard area) are made aware of the risk and given an opportunity to purchase flood insurance. (Sec. 20)	Same as H.R. 3121. (Sec. 124)
Civil Penalties for Lending Institutions	Would increase the civil penalty from \$350 to \$2,000 for lenders that do not enforce the mandatory flood insurance purchasing requirements. The annual cap on fines that can be levied against a lender would increase from \$100,000 to \$1,000,000. Would also add a "safe harbor" provision to protect mortgage lenders from "technical noncompliance" with flood insurance requirements and "unintended clerical errors" by stating that no penalties may be imposed on lenders who make good faith efforts to comply with the requirements. The \$1 million cap would not apply to regulated lending institutions during a calendar year if, in any three of the five calendar years immediately preceding that calendar year, the institution was assessed penalties that totaled \$1 million. (Sec. 6)	Would increase the civil penalty from \$350 to \$2,000 for lenders that do not enforce the mandatory flood insurance purchasing requirement. (Sec. 110)

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Escrow of Flood Insurance Payments	Would require that lending institutions place flood insurance payments into an escrow account on behalf of the borrower. The requirement would apply to any mortgage outstanding or entered into on or after the expiration of the 2-year period beginning on the date of enactment of law. (Sec. 20)	Would require state and federally-regulated lenders to include NFIP premium amounts with each mortgage payments with these amounts being placed in escrow to pay the NFIP premium. (Sec. 111(a))
Study of Economic Effects of Charging Actuarially-Based Premium Rates for Pre-FIRM Structures	Would require that the FEMA Administrator study and report to Congress on the economic effects of charging full actuarial risk premiums on non-primary residence and non-residential pre-FIRM structures. (Sec. 29)	No similar provision. However, would require GAO to report to Congress within one year of the enactment of the law the number and experience of NFIP insured properties constructed prior to 1976 (pre-FIRM structures) or area mapping. (Sec. 132(c))
Coverage		
Maximum Coverage Limits	Would increase coverage limits from \$250,000 (structure) and \$100,000 (contents) to \$335,000 (structure) and \$135,000 (contents) for any single-family dwelling and from \$500,000 to \$670,000 for structures and related contents of nonresidential properties. (Sec. 8)	No similar provision.
Mandatory Coverage Areas	Would require the GAO to study the regulatory, financial, and economic feasibility (i.e., costs of home-ownership, actuarial soundness of program, lender compliance) of expanding the standard for mandatory flood insurance purchase to include properties in areas of residual risk that would flood if not for the presence of structural flood control measures such as levees, floodwalls, and dams. (Sec. 3(a)(2))	Would require the FEMA Administrator to issue new regulations establishing a revised definition of areas of SFHA that reflect a residual risk, including areas located behind levees, dams, or other man-made structures. (Sec. 107(b)) Would require that homes located behind levees, dams, and other man-made structures become part of special flood hazard areas (SFHA) and therefore subject to the insurance purchase requirements, but only after the mapping of all residual risk areas in the United States. (Sec. 107(c))
Availability of Insurance for Multi-family Properties	No similar provision.	Would authorize the Administrator to make flood insurance available to cover residential properties of more than four units. The maximum coverage amount would be equal to the coverage amount made available to commercial properties, which is \$500,000 for structure and \$500,000 for contents. (Sec. 105)
Waiting Period for Effective Date of Policies	Would make coverage immediately effective if a policy is purchased within 30 days of the purchase or transfer of a property. (Sec. 5)	No similar provision.

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
New Lines of Coverage	Would provide optional coverage for: (1) additional living expenses following a flood loss when the residence is unfit to live in, (2) residential basement improvements (i.e., crawl spaces and other enclosed areas under buildings), (3) business interruption for commercial multifamily property, and (4) full replacement cost of the contents of properties. (Sec. 9)	No similar provision.
Extension of Pilot Program of Mitigation of Severe Repetitive Loss Properties	Would extend through 2012 the authorization of appropriations (\$40 million a year from the National Flood Insurance Fund) for the mitigation pilot program that funds preventive measures for severe repetitive loss properties (SRLP). SRLPs are defined as those that sustain four or more losses totaling more than \$20,000, or two or more losses that cumulatively exceed the value of the property. (Sec. 17)	Would authorize the appropriation of \$240 million and extend the severe repetitive loss property pilot program through fiscal year 2013. (Sec. 130)
Clarification of Replacement Cost Provisions, Forms, and Policy Language	Would require the Administrator of FEMA, within three months of enactment, to: (1) issue plain language regulations to clarify the applicability of replacement cost coverage for contents in the Standard Flood Insurance Policy; (2) revise any regulations, forms, notices, guidance, and publications to more clearly describe the meaning of full cost of repair or replacement under the replacement cost coverage; and (3) revise the language in flood insurance policies regarding rating and coverage, such as classification of buildings, basements, crawl spaces, detached garages, enclosures below elevated buildings, and replacement cost, to make flood policy provisions consistent with language used widely in homeowners policies. (Sec. 24)	Would require that NFIP insurance policies explicitly state all conditions, exclusions and other limitations in plain English and in boldface type twice the font size of the body of the insurance policy. Violations of this requirement would be subject to a fine of not more than \$50,000 at the discretion of the Administrator. (Sec. 134)
Financial/Borrowing Authority		
Borrowing Authority Debt Forgiveness	No similar provision.	Would eliminate any obligations owed to the U.S. Treasury by the NFIP to the extent such borrowed sums were used to fund the payment of claims resulting from the hurricanes of 2005. (Sec. 112)

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Borrowing Authority Limits	No similar provision.	Would decrease the borrowing authority for the NFIP from \$20.775 to \$1.5 billion. (Sec. 112)
Reserve Fund	No similar provision.	Would establish in the U.S. Treasury the National Flood Insurance Reserve Fund to meet the expected future obligations of the NFIP in higher-than-average loss years. The Fund would be capitalized in an amount equal to 1% of total potential loss exposure of all outstanding flood insurance policies in force during the prior fiscal year. NFIP will be required to contribute 7.5% of reserve annually until the fund is fully capitalized. After achieving the target reserve, any reduction in the reserve would be replaced through contributions of at least 7.5% of the target amount of the reserve annually. If NFIP is not able to make the minimum contribution it must report that fact to Congress. (Sec. 115)
Repayment Plan for Borrowing Authority	Would require FEMA to submit a report to Congress that includes a plan for repaying borrowed funds within 10 years. (Sec. 12)	Would require that whenever the NFIP has to borrow from the Treasury, FEMA would submit to Treasury and Congress a schedule for repayment of funds. This reporting requirement would continue every six months thereafter until the borrowed funds are repaid. (Sec. 116)
Additional NFIP Staff	Would authorize to be appropriated such sums as may be necessary for the NFIP to hire additional staff to implement the provisions of this Act. (Sec. 25)	No similar provision.
Mitigation		
Flood Mitigation Assistance Program	Would eliminate the limitation on aggregate amount of assistance and allow for the use of Flood Mitigation Assistance (FMA) funds to demolish and rebuild damaged property. Amounts made available would not be subject to offsetting collections through premium rates for flood insurance coverage. (Sec. 18)	No similar provision.

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Mitigation Grants for Individual Repetitive Claims Properties	Would direct FEMA to provide mitigation grants to individual owners of repetitive loss properties in communities that do not participate in the NFIP. [These communities might not participate because they have withdrawn from the NFIP or the community cannot meet the federal requirements for qualifying for FEMA funding.] (Sec. 16)	No similar provision.
Verification and Maintenance of Flood Insurance on Homeowner Assistance Grants in Mississippi and Road Home Grants in Louisiana	Would direct FEMA to develop a plan to verify that the recipients of Homeowner Grant Assistance Program in Mississippi and Road Home Grants in Louisiana, funded by Department of Housing and Urban Development Community Development Block Grants, maintain flood insurance on their properties as required as a condition of receiving the grants. (Sec. 32)	No similar provision.
Claims and Write-Your-Own (WYO) Insurers		
Administrative Expense of Write-Your-Own Insurance Companies	Would require Write-Your-Own (WYO) companies to submit to FEMA an annual report of all administrative and operational costs of the program, along with a biennial independent audit conducted by a certified public accountant. Would require the FEMA Administrator review the records and audits to determine if such payments are reasonable. (Sec. 31)	Would require the FEMA Administrator not later than 180 days after enactment to conduct a rulemaking proceeding to devise a data collection methodology to allow FEMA to collect consistent information on the expenses of WYO companies. Would require WYO companies, within 60 days after the effective date of the final rule, to submit 5 years of expense levels for selling, writing, and servicing policies based on that methodology. The Administrator would be required to conduct a rule-making proceeding to formulate revised expense reimbursement levels for the WYO companies expenses in selling, writing, and servicing flood insurance policies. Would also require the Administrator to submit a report to Congress on the rationale and purpose of the rule and degree to which such rule accurately represents the true operating cost and expenses of WYO companies. (Sec. 129)
Information from Write-Your-Own Insurers	No similar provision.	Would require that within 20 days of enactment, WYO insurers must provide to the FEMA Administrator any biennial report prepared in the prior five years. The Administrator must provide these reports to GAO not later than 10 days after receiving the report for the WYO insurer. An insurer that fails to provide the report would be reported to Congress by the Administrator and fined \$1,000 per day. (Sec. 129(a))

CRS-11

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
FEMA Participation in State Disaster Claims Mediation Programs	Would permit state insurance commissioners to submit a request to the Administrator of FEMA to have FEMA participate in state-sponsored nonbinding mediation of catastrophe-related insurance claims that may involve a combination of flood and other losses. All statements made and documents produced during the mediation would be deemed privileged, and would be considered confidential settlement negotiations made in anticipation of litigation. Participation in the mediation would not affect or expand the liability or rights or obligations of any party in contract. FEMA would not be required to pay any mediation fees. (Sec. 13)	Same as H.R. 3121. (Sec. 126)
Reiteration of FEMA Responsibility Under the 2004 Reform Act	<p>Under the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (P.L. 108-264; 118 Stat. 712), would “again” direct FEMA to establish an appeals process within 90 days of enactment that policyholders can use to resolve decisions of the Administrator relating to claims, proofs of loss, and loss estimates.</p> <p>Would require the Administrator to continue to work with the insurance industry, state insurance regulators, and other interested parties to implement previously developed minimum training and education standards for all insurance agents who sell flood insurance policies. (Sec. 21)</p> <p>Would require the Administrator to submit a report to Congress within six months describing FEMA’s implementation of provisions in the Reform Act of 2004. (Sec. 21)</p>	Would reiterate the responsibility of FEMA under the 2004 Reform Act to establish minimum training requirements, and require that FEMA report to Congress within three months after enactment, describing the implementation of each provision in the 2004 Reform Act. (Sec. 127)
Extension of Deadline for Filing Proof of Loss	Would extend to 180 days the period of time policyholders have to file proof of loss of property. The FEMA Administrator would not be able to deny a claim for damage based solely on the failure of the policyholder to meet such deadline if the insured demonstrates a good cause for such failure. (Sec. 26)	No similar provision.
Payment of Claims to Condominium Owners	Would prohibit FEMA from enforcing penalties assessed against individual condominium owners where the condominium association is underinsured. (Sec. 30)	Same as H.R. 3121. (Sec. 117)
Extension of Pilot Program	Would authorize an extension of the pilot program for	Same as H.R. 3121. (Sec. 30)

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
for Mitigation of Severe Repetitive Loss Properties	mitigation of severe repetitive loss properties from FY2008 through 2012. (Sec. 17)	
Authority of FEMA to Collect Information on Claims Payments	No similar provision.	Would authorize the FEMA Administrator to collect from WYO insurers any information and data needed to determine the accuracy of flood claims resolution. The type of information to be collected would include (1) adjuster flood and wind damage assessments; (2) amount paid for wind and flood elements of the claim; (3) total amount paid to the claimant from all parties as a result of the event; (4) amount paid by the insurer for other flood losses; and (5) total amount paid to the policyholder by the insurer for all flood. (Sec. 128)
Multiple Peril Coverage for Flood and Windstorm Losses		
Multiperil Coverage for Flood and Windstorm	<p>Amends Section 1304 of the National Flood Insurance Act of 1968 to enable the purchase of optional insurance against both flood and windstorm losses. Requires communities that participate in the NFIP to adopt adequate criteria for land management and use. Would authorize the FEMA Administrator to study and investigate to determine appropriate measures (e.g., laws, regulations, and ordinance relating) that could be adopted in windstorm-prone areas with respect to windstorm risks, zoning building codes, building permits, subdivision and other building restrictions for such areas, and windstorm damage prevention. The Administrator would be required to use the study results to establish comprehensive criteria designed to reduce damages caused by windstorms. Establishes limits on the amount of coverage to not exceed the lesser of the replacement cost for covered losses or \$500,000 for single-family dwelling, \$1,000,000 for non-residential structure and \$750,000 for contents. (Sec. 7)</p> <p>Would allow multiple peril and flood insurance coverage of multiple dwelling residential structures up to the total number of dwelling units times the maximum coverage limit per residential unit (Sec. 7(a)(7)(A)). Prohibits a WYO company from including language in its own homeowners' and windstorm policies that would exclude coverage of wind damage solely because flooding also contributed to the damage. (Sec. 35)</p> <p>Would require that the contract between the WYO and the NFIP state that the insurer has a fiduciary responsibility to federal taxpayers and will act in the best interests of the NFIP. (Sec. 35)</p>	No similar provision.

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Flood Mapping		
<p>National Flood Mapping Program</p>	<p>Would require the Administrator in consultation with the Technical Mapping Advisory Council to establish an ongoing program to review, update, and maintain flood insurance rate maps. Each map shall include a depiction of the 500-year floodplain, as well as “residual risk” areas behind levees and flood control dams. Updated flood maps would include relevant information on coastal inundation provided by the Army Corps of Engineers, storm surge modeling by the National Oceanic and Atmospheric Administration (NOAA), and stream flows, watershed characteristics, and topography provided by the U.S. Geological Survey (USGS). Would require that no changes in flood insurance status can go into effect until the remapping process is completed for the entire Army Corp of Engineers district affected by the map. (Sec. 22(a))</p> <p>Would require the Administrator to: (1) establish standards to ensure the adequacy and consistency of maps and methods of data collection and analysis; (2) give priority to updating and maintaining maps of coastal areas affected by Hurricanes Katrina and Rita in order to provide guidance with respect to hurricane recovery efforts; and (3) submit a report to Congress that describes the flood map modernization activities by June 30 of each year.</p> <p>Would require FEMA, when practical, to utilize emerging weather forecasting technologies, and consider the impacts of global warming and the potential future impacts of global climate change-related weather events, in assessing flood and storm risks.</p> <p>After each flood map is updated, FEMA shall, in consultation with the chief executive officer of each community affected, conduct a program to educate the community about the updated flood insurance maps.</p> <p>Would authorize the appropriation of \$400 million for each of fiscal years 2008 through 2013. (Sec. 22)</p>	<p>Would require FEMA to establish an ongoing flood mapping program to review, update and maintain flood insurance rate maps, including all flood-risk zone areas within the 100-year and 500-year floodplains and areas of residual risk, including those protected by levees, dams, and other man-made structures. (Sec. 119)</p> <p>Administrator would be authorized to establish or update flood-risk zone data in residual risk areas and make estimates of probable flood caused losses for the various flood risk zones. (Sec. 119)</p> <p>FEMA would be required to use the most accurate and consistent data in mapping program. (Sec. 122)</p> <p>Would require the various federal departments to work together to coordinate mapping and risk determination budgeting, and requires the Office of Management and Budget (OMB), FEMA and other federal agencies to submit a joint report to Congress within 30 days of the budget submission on the crosscutting budget issues with respect to mapping. (Sec. 121(a))</p> <p>Same as H.R. 3121. (Sec. 119(d)(2))</p> <p>Same as H.R. 3121. (Sec. 119)</p>

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Floodplain management Coordination	No similar provision.	<p>Would require the Secretary of Department of Homeland Security, the Administrator of FEMA, the Director of the Office of Management and Budget (OMB), and the heads of each federal department or agency to work together to ensure that flood risk determination data and geospatial data are shared among all federal agencies in order to coordinate the efforts of the nation to reduce its vulnerability to flood hazards. (Sec. 121(a))</p> <p>The Director of OMB, in coordination with FEMA, USGS, NOAA, USACE and other federal agencies, must submit to Congress, within 30 days of submitting the budget of the United States, an interagency budget crosscut report showing the budget proposed for each of the federal agencies working on flood risk determination data and digital elevation models. Sec. 121(a))</p>
Removal of Limitation on State Contributions for Updating Flood Maps	No similar provision.	<p>Would remove the current prohibition that prevents states from contributing greater than 50% of the cost of revising and updating map modernization. (Sec. 120)</p>
Nonmandatory Participation in the 500-Year Floodplain Areas	<p>Would authorize FEMA to include a note on flood insurance rate maps identifying 100-year and 500-year certified levees and encourage property owners to evaluate their risk of flooding. Would clarify that the note shall not be considered a legal requirement of participation in the NFIP. (Sec. 36)</p>	<p>Would require the FEMA Administrator to provide notice to any community located in the 500-year floodplain within six months after the date of completion of the initial mapping of the 500-year floodplain. Regulatory lending institutions, as a condition of making loans secured by property located within the 500-year floodplain, would be required to notify the purchaser or lessee and the servicer of the loan that such properties is within the 500-year floodplain. Federal and state lenders would be subject to penalties for noncompliance. (Sec. 123)</p> <p>Would exempt property within the 500-year floodplain from the mandatory purchase requirement. The NFIP and federal or state lending institutions must notify communities that they are located within the 500-year floodplain (i.e., an area with at least a 0.2% chance of being inundated with water in any year). [Owners of properties within the 500-year floodplain, but outside of the 100-year floodplain, would not be subject to mandatory purchase requirements but might voluntarily purchase flood insurance upon receiving notification of potential risk.] (Sec. 123)</p>

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Technical Mapping Advisory Council	Would reestablish the Technical Mapping Advisory Council, and establish terms of office, to provide direction and assistance to the Administrator of FEMA concerning flood mapping activities. The Council would include, among others, representatives from the U.S. Army Corps of Engineers, local and regional flood and storm water agencies, state geographic information coordinators, and flood insurance servicing companies. (Sec. 22(b))	Similar to H.R. 3121, but also would add two additional members to the Advisory Council, one representing a state agency that has entered into a cooperative technical partnership with the Administrator and has demonstrated the capability to produce FIRMs and the other a local governmental agency that has done the same. (Sec. 118(b))
Post-Disaster Flood Elevation Determinations	Would allow the Administrator of FEMA to issue interim flood elevation requirements for any areas affected by flood-related disaster. Interim elevation determinations would take effect immediately upon issuance and may remain in effect until FEMA established new flood elevations for such area. (Sec. 22(c)) Communities may request updates after repairs to flood projects, at no cost. (Sec. 22(d))	No similar provision.
Building Codes in Floodplain Management Criteria	Would authorize FEMA to submit a report to Congress on the regulatory, financial and economic impacts of including nationally recognized building codes as part of the floodplain management criteria of the NFIP. (Sec. 28)	See section below entitled, "FEMA Report on Building Codes." (Sec. 135)
Interagency Coordination Study	No similar provision.	Would require FEMA to contract with the National Academy of Public Administration to conduct a study on how FEMA can improve interagency and intergovernmental coordination on flood mapping and funding, and how FEMA can establish joint funding mechanisms with other federal agencies and units of state and local governments to share the collection and use of data for mapping. (Sec. 122)
Testing of New Floodproofing Technologies	No similar provision.	Would authorize the building of temporary residential structures for the purpose of testing new floodproofing technologies. This activity would not be considered in violation of any flood risk mitigation plan developed by a state or community and approved by the Administrator of FEMA. (Sec. 125)

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Notification of Appeal of Map Changes and Notification of Establishment of Flood Elevations	Would require FEMA Administrator to notify the chief executive officer of local communities about their right to appeal projected base flood elevation determinations, and the contact information of the person who handles appeals at FEMA. The Administrator would also be required to publish a notice in the <i>Federal Register</i> and local newspapers of such change and provide written notification by first class mail to each property affected by a proposed change in flood elevation, prior to the 90-day appeal period. Notification would include an explanation of the appeals process, the status of each property with respect to flood zone and flood insurance requirements under the act, and contact information for responsible officials. (Sec. 23)	No similar provision.
Coordination of Flood Risk Determination Data Sharing and Budgeting Efforts	No similar provision.	Would require the leadership of DHS, OMB and other federal agencies to work together to ensure that flood risk determination data and geospatial data are appropriately shared among federal agencies in order to coordinate the effort of the nation to reduce its vulnerability to flooding hazards. Would require the Director of OMB, in consultation with FEMA, USGS, NOAA, and the Army Corp of Engineers, to submit an interagency budget crosscut report that displays the budget proposed for each of the federal agencies working on flood risk determination data and digital elevation models. (Sec. 121)
Flood Insurance Advocate	Would authorize the creation of the position of National Flood Insurance Advocate in FEMA, who would report to FEMA Administrator. The national advocate would transmit a comprehensive report to Congress about the major problems facing the NFIP and report to Congress 6 months after enactment about the feasibility and effectiveness of establishing an Office of the Flood Insurance Advocate, headed by the National Flood Insurance Advocate, to assist insureds in resolving problems with the NFIP, including issues related to bureaucratic obstacles in the event of a disaster. The Administrator would be required to submit the report to Congress. (Sec. 34)	Would establish an Office of the Flood Insurance Advocate with the power to assist claimants with NFIP claims, including intervention in specific claims; identify changes that could resolve problems claimants experience with flood claims; audit and investigate insurers to ensure that only flood losses are allocated to NFIP policies; investigate insurers to ensure they are settling flood claims in good faith; conduct investigations relating the flood program to promote efficiency and reduce fraud and conflicts of interests; request documents and testimony; and establish regional flood insurance advocates. (Sec. 131)

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Commission on Natural Catastrophe Risk Management and Insurance		
<p>Commission on Natural Catastrophe Risk Management and Insurance</p>	<p>No similar provision.</p>	<p>Would establish a 16-member nonpartisan Commission on Natural Catastrophe Risk Management and Insurance (“Commission”) to examine the risks posed to the United States by natural catastrophes, and the means of mitigating those risks and paying for losses caused by natural catastrophes. The Commission would examine such issues as: (1) the condition of the property and casualty insurance and reinsurance markets prior to and in the aftermath of Hurricane Katrina, Rita, and Wilma in 2005, and the four major hurricanes that struck in 2004; (2) the current ability of states, communities, and individuals to mitigate their natural catastrophe risks, including the affordability and availability of such activities; (3) the exposure of the U.S. to natural catastrophes; (4) the catastrophic insurance and reinsurance markets and the relevant practices in providing insurance protection; (5) implementation of a catastrophic insurance system that can resolve key obstacles impeding broader implementation of catastrophic risk management and financing with insurance; (6) the financial feasibility of a national, regional, or other pooling mechanism designed to provide adequate insurance coverage and increased underwriting capacity to insurers and reinsurers, including private-public partnerships to increase insurance capacity in constrained markets; (7) methods to promote public insurance policies to reduce losses caused by natural catastrophes in the uninsured sectors of the U.S. population; (8) approaches to address access to insurance in low-income communities; (9) the impact of federal and state laws, regulations, and policies on the affordability and availability of catastrophe insurance and the capacity of private catastrophe insurance markets; (10) the financial condition of state residual markets and catastrophe funds in high-risk regions; (11) the role that innovation in financial services, and specifically risk-linked securities, in improving the affordability and availability of natural catastrophe insurance; (12) the need for strengthened land use regulations and building codes in states at high risk for natural catastrophes; and (13) the appropriate role, if any, for the federal government in stabilizing the property and casualty insurance and reinsurance markets. (Sec 205)</p>

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
	No similar provision.	The Commission would submit a report to Congress not later than 9 months after enactment with a possible 3-month extension. (Sec. 206)
	No similar provision.	The Commission would terminate 90 days after the date on which the Commission submits its report. (Sec. 209)
	No similar provision.	Would authorize to be appropriated such sums as may be necessary to complete the work of the Commission. (Sec. 210)
GAO Studies and Other Reports		
GAO Study of Methods to Increase Participation of Low-Income Families in the NFIP	Would direct GAO to conduct a study of potential methods, practices, and incentives that would increase the degree to which low-income property owners living in high-risk areas participate in the NFIP. The study would analyze the feasibility of providing coverage to low-income families at discounted rates, the amounts of the discount to make it affordable, and the extent to which low-income families would be affected by expanding the mandatory purchase requirements. (Sec. 19)	No similar provision.
Report on Financial Conditions of NFIP	Would require FEMA to submit an annual report to Congress on the financial status of the program. The report would include information on the current and projected levels of claims, premium receipts, expenses, and Treasury borrowing under the program. (Sec. 14)	Would require GAO to conduct a study and submit a report to Congress on NFIP’s activities and financial health, including the amount paid in premiums, losses, expenses, number of policies, insurance in force, estimate of average loss year and a description and amount of claims paid. (Sec. 132(b))
GAO Report on Expanding the NFIP	Would require the GAO to study the regulatory, financial, and economic feasibility (i.e., costs of home-ownership, actuarial soundness of program, lender compliance) of expanding the standard for mandatory flood insurance purchase requirement to include (1) properties in areas of residual risk that would flood if not for the presence of structural flood control measures such as levees, floodwalls, and dams (Sec. 3(a)(2)); and (2) properties that are located in any area having special flood hazards and which secures the repayment of a non-federally related loan. (Sec. 3(a)(3)).	Would require GAO to submit a report to Congress on: (1) the number of flood insurance policyholders currently insured; (2) the increased losses the NFIP would have sustained during the 2004 and 2005 hurricane seasons if the program had insured all policies up to \$417,000, and (3) the availability in the private marketplace of flood insurance coverage in amounts that exceed the current coverage limits. (Sec. 132(a))

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
GAO Review of FEMA Contractors	No similar provision.	Would require GAO, in conjunction with the DHS Inspector Generals Office, to review the three largest contractors FEMA uses in administering the NFIP. (Sec. 132(d))
GAO Study on Pre-FIRM Structures	Would authorize GAO to issue a report on the status of the pre-FIRM properties including the number of properties, cost of providing coverage, the rate at which such properties will cease to be covered under the program and the effects of the 2004 Reform Act will have on pre-FIRM properties. (Sec. 3)	Would require GAO to conduct a study of pre-FIRM structures that are receiving discounted premium rates. This study would be designed to determine the number and types of pre-FIRM structures and who owns the properties, their locations, and property values. (Sec. 132(c))
GAO Study of Multiperil Insurance Program on State Residual Markets	Would authorize GAO to conduct a study of the effects of the multiperil insurance program on enrollment and pricing of state residual property and casualty markets or plans and state catastrophe plans. (Sec. 33)	No similar provision.
FEMA Report on Building Codes	Would authorize FEMA to submit a report to Congress on the regulatory, financial and economic impacts of including nationally recognized building codes as part of the floodplain management criteria of the NFIP. (Sec. 28)	Would require FEMA to conduct a study and submit a report to Congress on the impact, effectiveness and feasibility of including nationally recognized building codes as part of FEMA's floodplain management criteria. The study would determine, among other things, the regulatory, financial, and economic impacts of the building code requirement on homeowners, states and local communities, local land use policies, FEMA, the state and local community resources needed to enforce this requirement and the effectiveness of the codes in reducing flood-related damage to buildings and contents. (Sec. 135)
GAO Feasibility Study on Private Reinsurance	No similar provision.	Would require GAO to submit a report to Congress on the feasibility of purchasing private reinsurance or retrocessionary coverage to underwrite primary private insurers for flood losses and the estimated potential total savings to the taxpayer of taking this action. (Sec. 133)
WYO Insurer Expense	No similar provision.	Would require FEMA within 6 months of enactment to develop a process to collect expense information from WYO insurers and revise expense reimbursement process. GAO would receive data from the Administrator and report to Congress on the effectiveness of the new process. (Sec. 129)

Provision	H.R. 3121 (Waters) (Passed by House 9/27/07)	S. 2284 (Passed by Senate 5/13/08)
Miscellaneous Provision		
Strategic Petroleum Reserves	No similar provision.	Would suspend federal government petroleum acquisition for the Strategic Petroleum Reserves. (Sec. 302)
Reimbursement of Expenses in Flood Control Projects	No similar provision.	Would modify the project for flood control, Big Sioux River and Skunk Creek, Sioux Falls, South Dakota to authorize the reimbursement of the non-federal share of project, only if additional federal funds are appropriated for that purpose. (Sec. 301)

Source: Congressional Research Service examination of legislation.