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ANYTHING BUT A BREEZE: MOVING FORWARD WITHOUT NFIP WIND COVERAGE

MICHAEL A. BROWN*

Abstract: The storm season of 2005, with the indelible images of Hurricane Katrina stuck in our minds forever, left much of the Gulf Coast devastated. The aftermath of the storm also caused serious damage to the National Flood Insurance Program (NFIP or the Program), which provides federally subsidized flood insurance to communities participating in the Program. Following the storms of 2005, many home and building owners and insurance companies began to disagree about the terms of their agreements and the cause of damage upon these structures. The main point of dispute was whether damage could be attributed strictly to flooding, to wind, or to a combination of both. In an effort to eliminate similar disputes and to enhance the ability for home and business owners to obtain relief for their losses, lawmakers have proposed including wind coverage within the NFIP. This Note will examine the NFIP and the idea of adding multiple peril coverage to the Program. This Note will attempt to explain why adding wind coverage to the NFIP will only further exacerbate the problems for an already fiscally irresponsible program.

Introduction

The hurricane season of 2005 produced unprecedented losses in the private insurance industry and the National Flood Insurance Program (NFIP or the Program).¹ The most severe losses incurred in 2005, as evidenced by the graphic images in the aftermath of Hurricane Katrina, took the form of human casualties and community destruction.² While flooding—the most costly natural catastrophe in the United States—played a leading role in the devastation experienced in New

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Orleans and the other Gulf Coast communities, it was not the only source of damage.\(^3\) Hurricanes are multiperil events, eliciting damage through both flooding and wind.\(^4\)

Following the 2005 storm season, significant disputes arose regarding victims’ insurance coverage because wind and flooding damage are generally covered under different policies.\(^5\) For reasons discussed in this Note, the majority of homeowners insurance policies do not cover flood losses.\(^6\) Instead, flood losses are covered through the NFIP, established in 1968 under the National Flood Insurance Act.\(^7\) Many blamed post-storm disputes on the private insurance market, claiming that private insurance companies exploited government oversight to manipulate insurance adjustments at the expense of policy holders and the Federal Program.\(^8\)

In an effort to create an option in the NFIP to offer both wind and flood coverage, the Multiple Peril Insurance Act of 2007 was introduced; it was approved by the House of Representatives and Senate as part of the Flood Insurance Reform and Modernization Act.\(^9\) The Act was aimed at restoring the financial solvency of the NFIP while providing insurance for both flood and wind damage.\(^10\)

This Note examines the NFIP and argues against the addition of wind coverage to the Program. Part I analyzes the history of the NFIP.\(^11\) Part II explores the Gulf Coast’s flood history, paying particularly close attention to Hurricane Katrina.\(^12\) Part III will evaluate the financial turmoil the NFIP has experienced since Hurricane Katrina.\(^13\) Part IV


\(^4\) Natural Catastrophe Insurance, supra note 3, at 1, 2 n.1.


\(^6\) Wind vs. Flood, supra note 5, at 3; see infra Part III.B.1.


\(^9\) H.R. 3121, 110th Cong. (2007); Taylor, supra note 8, at 790.

\(^10\) H.R. 3121.

\(^11\) See infra Part I.

\(^12\) See infra Part II.

\(^13\) See infra Part III. See generally Greater Transparency Needed, supra note 1 (discussing problems and making recommendations for the NFIP in the aftermath of Hurricane Katrina).
will dissect the potential results of adding wind coverage to the NFIP, concluding that a program including wind coverage will be unable to sustain additional liability.¹⁴

I. NATIONAL FLOOD INSURANCE PROGRAM

A. National Flood Insurance Act of 1968

Congressional interest in flood relief began in the late 1800s as a number of floods produced human and economic losses along the Mississippi River basin.¹⁵ The federal government employed structural measures to control flooding in response to prior disasters.¹⁶ However, physical and economic losses piled up under the Flood Control Act of 1936 even after the implementation of levees and barriers designed to protect at-risk citizens from the dangers of flooding.¹⁷ In the early 1960s, Hurricanes Donna, Carla, and Betsy illustrated the need for additional federal help.¹⁸ Through the Southeast Hurricane Disaster Relief Act of 1965, the U.S. Department of Housing and Urban Development provided a report to Congress illustrating the financial burdens of flood disasters and the need for flood insurance.¹⁹

Responding to report recommendations, Congress passed the National Flood Insurance Act of 1968, enabling the National Flood Insurance Program (NFIP or the Program), with three primary purposes in mind.²⁰ First, the Program would identify and map flood-prone communities.²¹ Second, the Program would require community adoption and enforcement of floodplain management regulations.²² Lastly, the Program would provide federally subsidized flood insurance to communities who participated in the Program.²³

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¹⁴ See infra Part IV.A.1.
¹⁷ Id.
¹⁸ Houck, supra note 3, at 68.
¹⁹ Id. at 68–69.
²² Id.
²³ See id.
The Program, directed by the Federal Emergency Management Agency (FEMA), requires the Director of FEMA to identify and map at-risk communities and also establish flood-risk zones. The culmination of this study is the Flood Insurance Rate Map (FIRM). Since the NFIP is a voluntary program, a community must apply to be identified and mapped according to the procedures followed by FEMA. There are a number of pieces within the NFIP, including the emergency program, regular program, and the “Write Your Own” program.

1. Emergency Program

The NFIP emergency program provides a first layer amount of insurance on all insurable structures before the effective date of a community’s initial FIRM. The emergency program was established to deal with delays between the completion of a risk study and a community’s insurance eligibility. The main element of the FIRM that guides communities is the base flood elevation (BFE), which requires buildings be elevated or flood-proofed to the appropriate level as indicated on the FIRM. The FIRM also illustrates areas that fall within a “100-year flood” boundary, named the Special Flood Hazard Area (SFHA). A community is not responsible for adhering to NFIP’s minimum floodplain requirements while part of the emergency program since its risk study is not complete. However, a community must adopt adequate floodplain management regulations to become part of the NFIP regular program. The goal of the emergency program is to promote entrance into the NFIP while allowing communities time to meet application requirements, which includes producing a Flood Hazard Boundary Map.

24 Id. As of August 1, 2002, 19,200 communities had been issued Flood hazard maps. The total cost of this map production was over $1.5 billion. Id.
25 Houck, supra note 3, at 76.
26 See NFIP, supra note 16, at 12; see also Houck, supra note 3, at 73.
29 See id.
30 Houck, supra note 3, at 76–77.
31 44 C.F.R. § 59.1; King, supra note 15, at 7. The definition falls under the title of “area of special flood hazard.” 44 C.F.R. § 59.1.
32 King, supra note 15, at 9.
33 Id.; see 44 C.F.R. § 59.3.
34 See Beth Davidson, How Quickly We Forget: The National Flood Insurance Program and Floodplain Development in Missouri, 19 WASH. U. J.L. & Pol’y 365, 371 (2005). Communities have one year to complete the application process. Id.
2. Regular Program

A community becomes part of the regular program when a FIRM has been completed and the community has adopted the NFIP’s minimum floodplain management regulations consistent with federal criteria. At the minimum level, which occurs when the program Administrator has not yet defined the SFHA’s, a community is responsible for requiring permits for all construction or development within the community to determine if the development will occur in flood-prone areas. The community is required to further mitigate flood-loss risks through review of permit applications and proposed development. Once a community becomes part of the regular program, the Director of the NFIP is statutorily required to make insurance available to interested residents within the community. In the regular program, additional flood insurance is available based upon actuarial determinations reflecting the probability of flood damages.

While the NFIP had promising goals, it got off to a slow start because of waning community participation. Because only 100,000 policyholders had signed on by 1972, Congress decided that greater efforts to promote the Program were needed. The effort came in the form of the National Flood Disaster Protection Act (NFDPA) of 1973, which made the purchase of flood insurance mandatory for the protection of SFHA properties. Participation in the NFIP skyrocketed following the passage of the NFDPA. Congress passed the National Flood Insurance Reform Act (NFIA) of 1994 to continue the growth of the NFIP.

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35 44 C.F.R. § 59.2(b).
36 Id. § 60.3(a)(3).
37 Id.
40 See Houck, supra note 3, at 70.
41 Id.
43 See Davidson, supra note 34, at 368–69. By January 31, 1983, over 2 million policies had been issued through the NFIP. Houck, supra note 3, at 72.
44 Pub. L. No. 103-325, 108 Stat. 2255 (codified as amended at 42 U.S.C. § 4001). States have also begun to address issues of flood coverage by selling insurance in high-risk areas, such as the “Wind Pool” in Mississippi. See Natural Catastrophe Insurance, supra note 3, at 1; Taylor, supra note 8, at 788–89.
B. Write Your Own Program

In the passage of the NFIA, Congress made clear that there were factors that had restricted the private insurance industry from entering into flood insurance. However, Congress believed that the federal government working side-by-side with private insurers could produce a successful flood insurance industry.

The program that Congress had envisioned evolved in 1983 to become the “Write Your Own” (WYO) program. Under the WYO program, private insurance companies issue policies and settle claims under their own names, but these policies fall under the umbrella of the NFIP. WYO insurers must abide by the NFIP’s Write Your Own Program Financial Control Plan Requirements and Procedures manual, monthly transaction reporting requirements, as well as complete reviews for operations every three years. Buyers of insurance can either buy through the WYO program, or through the federal government itself in the NFIP “direct” program. According to a report from the Department of Homeland Security, approximately ninety-eight percent of flood policies were written by WYO insurers.

There was fear that WYO insurers would blame damage on flooding, which is covered by the NFIP, rather than wind, which is covered by homeowner policies. The main characteristic that separates the WYO program from the direct program is that the insurers are from the private industry, meaning that they are most likely also providing homeowners insurance, which does not include flood insurance coverage. Since homeowner policies almost always cover wind damages, but exclude flood damages, there seems to be a potential conflict of interest for any WYO insurer who also provides homeowners insurance.

As will be expanded on in Part III, the Office of Inspector General (OIG) conducted a study to investigate whether, and to what extent, insurance companies participating in the WYO program improperly attributed damages from homeowner policies or wind insurance

45 42 U.S.C. § 4001 (b) (1).
46 Id. § 4001 (b) (2).
48 See id. at 23.
49 King, supra note 15, at 10–11.
50 See Wind vs. Flood, supra note 5, at 3.
51 Id. at 4.
52 Id. at 1.
53 See id. at 3.
54 Id. at 12.
pools. The OIG found no evidence of WYO insurers attributing more
damage to flooding rather than to wind following Hurricane Katrina
despite popular perception to the contrary. While sixty-six percent of
the claims filed in the study had the same insurer providing the flood
and homeowner policies, most of these claims utilized a different ad-
juster—the person who determines the cause and extent of damage
after a storm—for each policy which reduced the opportunity for a
conflict of interest from occurring.

C. The Standard Flood Insurance Policy and Flood Insurance Rates

The Standard Flood Insurance Policy (SFIP) describes the terms of
the agreement between a purchaser of insurance and FEMA or a WYO
insurer. The SFIP comes in three forms—the Dwelling Form, the
General Property Form, and the Residential Condominium Building
Association Policy Form—with the three forms designed to cover all
possible occupancies. Most notably, the SFIP defines a flood as:

A general and temporary condition of partial or complete in-
undation of two or more acres of normally dry land area or of
two or more properties (at least one of which is your prop-
erty) from: a. Overflow of inland or tidal waters; b. Unusual
and rapid accumulation or runoff of surface waters from any
source; c. Mudflow.

If a flood damages an occupancy that is insured under the SFIP, there
are maximum amounts of coverage available to the property victim. A
residential family unit building or condominium is eligible to receive
up to $250,000 in building coverage and $100,000 in personal property
coverage. For non-residential buildings, insurance payouts can be as
high as $500,000 in building coverage and $500,000 in personal prop-
erty.
Before the NFIP can provide relief for flood damage victims, the Program must first receive premiums from insurance holders.64 Occupants must pay either the actuarial rates established under the SFIP or pay “subsidized” rates.65 “Pre-FIRM” buildings, which were built before a community’s application or entrance into the NFIP, receive subsidized rates as authorized by Congress.66 Since many pre-FIRM buildings were built well in advance of NFIA’s passage in 1968, Congress believed that the buildings were built without actual knowledge of the extent of flood risk; therefore, the buildings’ owners should not have to pay the actuarial premium.67 Further, it was evident that for many pre-FIRM buildings, the majority of a family’s assets were invested in the home itself, leaving little to pay the actuarial rate when a storm caused severe damage.68 The NFIP viewed subsidies as a tool to persuade more communities to join the Program, and with entrance, encourage more prudent land use decisions from the communities as they follow flood maps and other mitigation measures.69 Subsidized rates are paid at an estimated thirty-five to forty percent of what the actuarial rate will be for buildings with risk of flooding.70

Congress did not intend for the Pre-FIRM subsidies to last forever.71 If a pre-FIRM structure is substantially improved, there is a requirement under the NFIP that it meet current construction and building code standards.72 The NFIP envisions a scenario in which subsidized rates will be phased out over time.73 That vision has come to fruition.74 At the beginning of the Program, seventy percent of the issued policies were subsidized, compared to roughly twenty-eight percent of the policies in 2007.75

To make up for the losses incurred on subsidized premiums, the NFIP sets a premium level paid by NFIP participants that establishes the

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64 See generally King, supra note 15, at 14 (explaining the differences in rates and subsidies offered under the NFIP).
65 Id.
66 Id.
68 King, supra note 15, at 14.
69 See id.
71 See King, supra note 15, at 15.
72 44 C.F.R. § 60.3 (2009).
74 See id.
75 Id.
“average historical loss year.” FEMA must determine the needed revenue to meet the average historical loss year based upon the number of policies outstanding and the expected losses and program expenses.

For buildings that are considered post-FIRM, or built after a community’s entrance into the NFIP, actuarial rates are applied to the structures to reflect risks of building in flood-prone areas. The actuarial rates rely on the flood-risk zone that a building is built in, such as an SFHA. Other factors in deciding the actuarial rate include the height of the lowest floor above or below the Base Flood Elevation (BFE), the type of building, and the size of the building. The most important of these factors is the zone in which the building is to be built since FEMA bases flood rates for post-FIRM structures on their exposure to damage, and the FIRM is designed to estimate flood damage. For instance, a building that is to be erected in “Zone A” on a FIRM has a one percent annual flood risk and a twenty-six percent risk of flooding over the course of a thirty-year mortgage. A property owner is required to purchase flood insurance in order to obtain a loan from a federally regulated lender if their property is located in “Zone A,” which is found in a high-risk area, or an SFHA.

D. Repetitive Loss Problem

“Repetitive Loss Properties” (RLP) have been one of FEMA’s largest challenges in its management of the NFIP. A repetitive loss property is defined as any insurable building that has incurred at least two claims of $1000 or more from the NFIP within any ten-year rolling period since 1978. RLPs are a major financial strain on the NFIP. According to a 2005 study, while only one percent of NFIP policies are RLPs, these one percent of polices account for an average of thirty per-
cent of the total claim payouts.\textsuperscript{87} Since RLPs are such a small percentage of the Program, yet require such a large percentage of payouts, they have increased NFIP’s annual losses and have made it increasingly challenging for the Program to properly allocate resources to prepare for future flood mitigation efforts.\textsuperscript{88} To date, the NFIP stands $17.3 billion in debt to the U.S. Treasury.\textsuperscript{89}

To deal with the difficulties presented by RLPs, President George W. Bush signed the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004.\textsuperscript{90} The Act reauthorized the NFIP through September 2008\textsuperscript{91} and was aimed at reducing losses to properties for which repetitive flood insurance claim payments have been made.\textsuperscript{92} Congress found that the vast majority of RLPs are pre-FIRM buildings, meaning that they are subsidized under the NFIP, which further exacerbates the discrepancy between premiums paid and payouts incurred on behalf of the Program.\textsuperscript{93}

A prominent attribute of the 2004 Act is a pilot program that aims at mitigating the damages of RLPs.\textsuperscript{94} Money is transferred from the National Flood Insurance Fund to the National Flood Mitigation Fund, which provides these funds to state and local governments in exchange for RLP mitigation efforts.\textsuperscript{95} While the mitigation efforts vary depending on the individual circumstances of an RLP, some of the strategies employed include removing buildings from SFHAs, elevating buildings above the BFE for the given area, or local drainage improvement that complies with the standards of NFIP.\textsuperscript{96} The 2004 Act requires that if a property owner refuses an offer of flood mitigation, his or her insurance premium will be raised to 150% of the chargeable rate.\textsuperscript{97} How-

\textsuperscript{87} King, \textit{supra} note 15, at 5.
\textsuperscript{88} Id. at 20. RLPs are part of the “adverse selection” problem, where policyholders are centralized in a high-risk area, leaving the insurer unable to spread its losses. See id. at 23–24.
\textsuperscript{91} King, \textit{supra} note 15, at 29.
\textsuperscript{94} King, \textit{supra} note 15, at 29.
\textsuperscript{95} Id. at 30.
\textsuperscript{97} King, \textit{supra} note 15, at 31.
ever, at no time can the premium reach a level that exceeds the actuarial rate of the property.\footnote{Id.}

II. Gulf Coast History

A. Geography

The Gulf Coast presents great economic and ecologic value to the United States.\footnote{Gregory J. Smith, Restoring Resilience to the Gulf of Mexico Coast, in \textit{Science and the Storms: The USGS Response to the Hurricanes of 2005}: U.S. Geological Survey Circular 1306, at 1, 2 (G.S. Farris et al. eds., 2007), available at http://pubs.usgs.gov/circ/1306/pdf/c1306_ch1_a.pdf [hereinafter \textit{Science and the Storms}].} Economically, nearly thirty-four percent of the U.S. natural gas supply and over twenty-nine percent of the nation’s crude oil supply move through Louisiana.\footnote{Id.} The Gulf Coast region also produced the largest commercial fish and shellfish landings in the continental United States during 2003–2004.\footnote{Id.} Ecologically, the coastline provides habitat for birds migrating from North America to South America.\footnote{Id.} The coast also provides essential marshlands and barrier islands which buffer communities from winds and floods.\footnote{Id.}

The easy access of the Gulf Coast is also the region’s largest vulnerability.\footnote{See id. at 3. The Gulf Coast is vulnerable in large part because of the transformation of wetlands to open water because of subsidence, sea-level rise, and erosion, all of which have been amplified or accelerated by human processes such as gas and oil extraction and channelization and leveeing of rivers. Id.} For example, New Orleans develops around the curve of the Mississippi River and is bordered by Lake Pontchartrain and Lake Borgne, which opens to the Gulf of Mexico.\footnote{Am. Soc’y of Civil Eng’rs, The New Orleans Hurricane Protection System: What Went Wrong and Why 5 (2007), available at http://www.asce.org/files/pdf/ERP_report.pdf [hereinafter ASCE].} The threats of New Orleans’ surrounding waters are exacerbated by the fact that the city is sinking.\footnote{Id. at 8.} Deposition of sediments provided by the Mississippi historically counter the subsidence of New Orleans’ marsh.\footnote{See id.} However, due to man-made facilities such as levees, sediments from the Mississippi are not gathering in New Orleans and the lack of replenishment for the natural subsidence is causing the city to fall farther below sea level.\footnote{Id.}
B. Flood Control Projects

In 1965, soon after Hurricane Betsy hit the Gulf Coast, Congress authorized the construction of the Lake Pontchartrain and Vicinity Louisiana Hurricane Protection Project in the Flood Control Act of 1965. The project, designed to protect areas of Louisiana surrounding Lake Pontchartrain from hurricanes, was a joint federal, state, and local effort with all parties contributing funds to cover the effort’s costs. The Army Corps of Engineers (the Corps) was responsible for the flood control systems employed through the project, most notably the levees surrounding the New Orleans region.

The Corps had the choice of two plans to implement in the Lake Pontchartrain area. The first plan, referred to as the “barrier plan,” was originally chosen to be implemented since it was considered the cheaper project and was projected as the quicker of the projects to complete. However, many environmentalists were opposed to the barrier project, including Save Our Wetlands, a group that was able to procure an injunction against the Corps from constructing barrier projects. Soon thereafter, the Corps decided to proceed with their second option, the “high level” plan, because it was less costly than the barrier plan and would be more acceptable for the surrounding environment. Regardless of the decision-making process, the Corps was unsuccessful in their design of the levee system that surrounded the New Orleans area.

C. Hurricane Katrina

Hurricanes Dennis, Rita, and Wilma caused significant damage to the Gulf Coast during the 2005 storm season; however, none of these storms compared to the devastation caused by Hurricane Katrina.

110 Id.
111 Id.
112 See id. at 2–3.
113 See id.
114 Id. at 5 (citing Save Our Wetlands v. Rush, Civ. A. No. 75–3710 (E.D. La. Dec. 30, 1977)).
116 See id. at 191–93.
117 SCIENCE AND THE STORMS, supra note 99, at i.
118 ASCE, supra note 105, at v–vii.
Katrina made landfall with Louisiana as a category three storm on the morning of August 29, 2005.\(^{119}\) The storm, which reached a category five level while south of the Mississippi River on August 28, created surges which reached twenty feet above sea level along New Orleans’ levees; Hurricane Katrina did not spare the coasts of Mississippi and Alabama.\(^{120}\) Even before sea levels had risen to their highest levels, many levees had already breached.\(^{121}\) As early as 5:00 a.m., a levee breach had left the Lower Ninth Ward flooded.\(^{122}\) In the hours that would follow, eighty percent of New Orleans would be underwater and over 1000 members of the community would die.\(^{123}\) The Gulf Coast—and the NFIP—has not been the same since.

III. NFIP Post Katrina

A. Post-Storm Claims

Hurricane Katrina took a devastating toll on the NFIP.\(^{124}\) In 2005, FEMA paid out $17.5 billion compared to a mere $632 million in 2006 and $523 million in 2007.\(^{125}\) By May 2007, FEMA had borrowed over $17 billion from the federal government, leading President Bush to seek authorization for a law that would expand the borrowing powers of the NFIP in order to ensure that the Program could continue to pay claims for losses resulting from Katrina.\(^{126}\)

Approximately one and a half years after Katrina, FEMA announced that it had already resolved over ninety percent of its claims arising out of Hurricanes Katrina and Rita.\(^{127}\) Private insurers also pub-

\(^{119}\) Id. at 15.


\(^{121}\) ASCE, supra note 105, at 27.

\(^{122}\) Id.

\(^{123}\) Id. at 1.


\(^{126}\) Summary of Key Provisions, supra note 124. It is important to note that FEMA must repay any borrowed funds with interest. Id.

licized their efforts in resolving homeowners insurance claims. The Insurance Information Institute claimed that ninety-five percent of homeowners insurance claims in Louisiana and Mississippi had been settled within a year of the tragedy. An IPSOS Public Affairs poll even found that four in five claim-filers were happy with the results of the process.

However, a troubling statistic in the aftermath of Katrina was the poor participation rate of homes covered under the NFIP. New Orleans was reported to have the highest participation rate of all of the communities in the Gulf Coast region, but even in New Orleans, participation did not break sixty percent. Nationally, the number of buildings in flood prone areas to secure flood insurance is estimated at around twenty percent.

B. Wind vs. Water Disputes

1. Conflict of Interest

The most difficult insurance controversy to emerge from Katrina arose from the distinction between wind and water when assessing the damage to homes. The difficulty in assessing whether a home was damaged because of wind or flooding is tremendous when the assessor is forced to make a determination based on a mere slab of concrete. Potential conflicts of interest emerged immediately after the storm based upon the fact that homeowner policies, while covering wind, do not cover flooding. Since many WYO insurers, who are backed by the federal government for flood losses, also provide homeowners policies, some speculated that these insurers had assessed damage as flood-related rather than wind-related in an effort to avoid financial liability.

129 Id.
130 Id.
132 Id. Many counties in Mississippi had extraordinarily low participation, with Harrison and Jackson counties as low as ten percent participation in the program. Id.
133 Douglas R. Richmond, Insurance and Catastrophe in the Case of Katrina and Beyond, 26 Miss. C. L. Rev. 49, 56 (2006–2007).
134 Wind vs. Flood, supra note 5, at 1.
135 Id.
136 See id. at 3.
137 See Taylor, supra note 8, at 783.
As previously mentioned, a study from the Office of Inspector General (OIG) found no evidence of WYO insurers attributing wind damages to flooding. While the OIG found that over thirty percent of its sample did include error in terms of assessing the cause of damage, only 2 of 131 instances of error clearly showed improper delegation of wind damage to the NFIP. The OIG report does illustrate, however, just how difficult it is to distinguish between wind and flood damage when both occur concurrently. Further, a 2007 Government Accountability Office (GAO) study determined that there is a conflict of interest in allowing a WYO company to be responsible for adjusting both a homeowners policy and an NFIP flood insurance policy at the same time.

2. Litigation

The controversy of wind versus flood escalated when Mississippi Attorney General Jim Hood sued Allstate Insurance Co., petitioning the court to void flood exclusions from homeowners policies and thereby compel the insurance company to pay for damage from the storm. Allstate responded that it did not intend to pay claims that they had never insured. Allstate emphasized that the NFIP had taken serious efforts to advertise flood insurance in the Gulf Coast, and that Allstate policyholders clearly understood that they were not insured for flooding.

The litigation that followed Katrina did little to clarify whether homeowners policies could be uniformly interpreted. The main issue in much of the litigation was whether flood exclusions should deprive policyholders of their claims when both wind and flooding contributed to losses.

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138 Wind vs. Flood, supra note 5, at 5.
139 Id. at 6.
140 Id. at 10.
141 Id. at 12.
143 Id.
144 Id.
146 Scales, supra note 73, at 26.
One court employed a narrow analysis of the term “flood.” In *Buente v. Allstate Property & Casualty Insurance Co.*, the District Court for the Southern District of Mississippi denied the plaintiffs’ motion for summary judgment because the plaintiffs’ home was destroyed by a tidal wave in the storm, the coverage of which being clearly and unambiguously excluded from coverage in the policy. The main issue was whether the damage to the plaintiffs’ home was attributable to the flood exclusions in the Allstate policy. The plaintiffs were insured under a Deluxe Homeowners Policy that Allstate has issued. The policy insured against “sudden and accidental direct physical loss . . . except as limited or excluded by this policy.” The exclusions to the policy were losses caused by “[f]lood, including, but not limited to surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind.”

With no dispute that water entered the home and lead to damage, Allstate believed that their policy provisions were “clear and unambiguous.” The plaintiffs believed that since “storm surge” was not specifically listed or defined in Allstate’s exclusionary policy, that it should have been covered as a loss.

The court, ruling in favor of Allstate, made clear that the exclusions to the policy were written broadly with the intent of excluding inundation damages. The court found that since the water that entered the plaintiffs’ home was tidal water, it fell under the definition of flooding, which was found in the exclusionary provision of the plaintiffs’ homeowners policy.

Further litigation surrounded the use of anti-concurrent causation (ACC) clauses found in many homeowner policies. In *Tuepker v. State Farm Fire & Casualty Co.*, State Farm’s motion to dismiss was denied after the court concluded that an ACC clause in a homeowners policy was

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148 Id. at *1–2.
149 Id. at *1.
150 Id.
151 Id. (quoting the plaintiffs’ insurance policy, Allstate Policy No. 9–15–930365 § I).
152 Id. (quoting the plaintiffs’ insurance policy, Allstate Policy No. 9–15–930365 § I).
154 Id.
155 Id.
156 Id. at *1–2.
unenforceable when wind and flooding both play a role in the destruction because the clause was ambiguous.\footnote{Id. at *4.} Major insurers relied on ACC clauses as their justification for only paying for damage that was clearly isolated to wind alone.\footnote{See Taylor, supra note 8, at 784.} The ACC clause in question read:

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these.\footnote{Teupker v. State Farm Fire & Cas. Co., 507 F.3d 346, 351 (5th Cir. 2007).}

State Farm argued that the language of their ACC clause barred coverage for inseparable damage, as long as the damage would not have occurred in the absence of water.\footnote{Id. at 352.}

The Court of Appeals affirmed the district court’s ruling, meaning that the insureds could not recover for damages resulting from a storm surge.\footnote{Id. at 353.} The combination of the ACC clause and the water damage exclusion found in the State Farm policy led the court to reason that “indivisible damage caused by both excluded perils and covered perils or other causes” was not covered under the policy.\footnote{Id. at 354.}

The Fifth Circuit also handled litigation in Louisiana, beginning with In re Katrina Canal Breaches Litigation.\footnote{495 F.3d 191 (5th Cir. 2007).} The plaintiffs in the case were policyholders who had purchased homeowners, renters, or commercial property insurance.\footnote{Id. at 196.} The plaintiffs argued that the negligent design, construction, and maintenance of levees caused the flooding of New Orleans.\footnote{Id. (“At one point following Katrina’s aftermath, approximately eighty percent of the city was submerged in water.”).} The plaintiffs argued further that since policies did not clearly exclude damages that were caused by negligence, they should be

\footnote{Id. at *4.}
\footnote{See Taylor, supra note 8, at 784.}
\footnote{Teupker v. State Farm Fire & Cas. Co., 507 F.3d 346, 351 (5th Cir. 2007).}
\footnote{Id. at 352.}
\footnote{Id. at 353.}
\footnote{Id. at 354.}
\footnote{495 F.3d 191 (5th Cir. 2007).}
\footnote{Id. at 196.}
\footnote{Id. (“At one point following Katrina’s aftermath, approximately eighty percent of the city was submerged in water.”).}
entitled to relief.\textsuperscript{167} The Court of Appeals for the Fifth Circuit held that the water that flowed through the failed levees of New Orleans constituted a flood regardless of the reasons.\textsuperscript{168} As such, the court ruled that the cause of flooding was immaterial and that the flood itself was unambiguously excluded from coverage under plaintiffs’ all-risk policies.\textsuperscript{169}

\section*{C. Action for Reform}

1. State Action

Many coastal states have taken action to deal with insurance availability and affordability issues following storms.\textsuperscript{170} For instance, following Hurricane Andrew, Florida found its insurance industry in turmoil, leading the state legislature to create a state-sponsored insurance system.\textsuperscript{171} Numerous states have become insurers for people in high-risk areas.\textsuperscript{172} These states have created wind pools, which are insurance pools available for property owners who cannot find coverage elsewhere.\textsuperscript{173} The pools also provide reinsurance, which is essentially insurance for insurance companies.\textsuperscript{174} Normally an insurance company will pay a premium to a private reinsurance company who will indemnify it for some of its exposure on issued policies.\textsuperscript{175} Essentially an insurer hedges its losses by ensuring the certainty of a smaller loss.\textsuperscript{176} Often, the state wind pool is the insurer of last resort for many coastal communities.\textsuperscript{177}

\begin{thebibliography}{99}
  \bibitem{167} Id. at 196.
  \bibitem{168} Id.
  \bibitem{169} In re Katrina Canal Breaches Litig, 495 F.3d at 196. In \textit{Bilbe v. Belsom & State Farm Fire and Casualty Co.}, the court again found that State Farm’s ACC clause and water damage exclusions were valid, reasoning that these policies unambiguously exclude damage for all flooding whether driven by hurricane winds or not. See No. 06-7596, 2007 WL 2042437, at *4 (E.D. La. July 12, 2007), aff’d, 530 F.3d 314 (5th Cir. 2008).
  \bibitem{170} See \textit{Natural Catastrophe Insurance}, supra note 3, at 1.
  \bibitem{172} \textit{Natural Catastrophe Insurance}, supra note 3, at 1.
  \bibitem{174} Agnew, supra note 171, at 716; Richmond, supra note 133, at 52.
  \bibitem{175} Richmond, supra note 133, at 52.
  \bibitem{176} Agnew, supra note 171, at 716.
  \bibitem{177} Taylor, supra note 8, at 788. Many states’ wind pools have been burdened with policies as private insurers have backed out of markets. Forty percent of Cape Cod’s policies have been forced into the Massachusetts FAIR plan, while half of the policies in Texas coastal counties are inside the Texas Wind Pool. Id. at 789.
\end{thebibliography}
2. NFIP Reform Efforts

Following Katrina, there has been political pressure to amend the NFIP to include wind coverage as well as flood coverage. On September 23, 2008, the House of Representatives passed a seven month NFIP extension so that lawmakers could patch up the differences envisioned for the future of the Program. Prior to the financial crisis beginning in the fall of 2008, House Financial Services Committee Chairman Barney Frank and Senate Banking Committee Chairman Chris Dodd had been attempting to finalize efforts to reform the NFIP.

The House proposal, H.R. 3121, referred to as The Flood Insurance Reform and Modernization Act of 2007, would have established the Multiple Peril Insurance Act as introduced by Rep. Gene Taylor (D. MS). With many insurance companies withdrawing from coastal areas, state-sponsored insurers have been forced to handle a disproportionate number of policies. The Multiple Peril Insurance Act, or H.R. 920, which was incorporated into H.R. 3121, would have eased that burden and provided protection to homeowners following damage resulting from both flood and wind. Unlike more traditional homeowner and federal policies, H.R. 920 would have provided approval and payment of claims without requiring that a specific cause of loss be identified. The bill aimed at allowing up to $500,000 for any residential unit and $150,000 for any contents related to the unit. For nonresidential units, the maximum building coverage would have been increased to $1,000,000, and the contents of the structure could be covered up to $750,000.

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181 Taylor, supra note 8, at 790.
184 H.R. 920, § 2(4).
185 Id. § 2(7)(A).
186 Id. § 2(7)(B).
H.R. 920 was authored in an effort to eliminate the use of ACC clauses from insurers who provide homeowners insurance and also participate in the WYO program.\textsuperscript{187} To procure wind coverage, a homeowner would need to also acquire flood coverage.\textsuperscript{188} Further, communities would need to adopt building codes consistent with the International Building Codes (IBC) before members of their communities would be eligible for the multiple peril insurance.\textsuperscript{189} The IBC requirement would result in premiums being set through the adjustment of building characteristics and other construction methods.\textsuperscript{190}

The bill’s ultimate goal was stability in the insurance market.\textsuperscript{191} In many coastal communities insurance companies have left, deciding against writing policies in high risk areas.\textsuperscript{192} Agents would receive commissions for selling the multiperil policy and be reimbursed for losses stemming from administrative expenses.\textsuperscript{193} The Act would also spread hurricane risk geographically.\textsuperscript{194} The drafters believed that since a multiple peril program would be applicable to a wider area of coastal communities than private insurance currently accommodates, the Act would stabilize the economics of the NFIP.\textsuperscript{195} Further, the program would eliminate any doubt for homeowners as to whether they would be covered by insurance when a storm was looming.\textsuperscript{196}

H.R. 920 passed through the House and the Financial Services Committee, but was delayed on its way to the Senate.\textsuperscript{197} There is no question that proposals for the NFIP to include wind coverage will be addressed in the near future.\textsuperscript{198}

\textsuperscript{187} See Taylor, \textit{supra} note 8, at 792.
\textsuperscript{188} \textit{Id.} at 791.
\textsuperscript{189} \textit{Id.}
\textsuperscript{190} \textit{Id.} at 792.
\textsuperscript{191} \textit{See id.} at 790.
\textsuperscript{192} \textit{Id.}
\textsuperscript{193} Taylor, \textit{supra} note 8, at 791.
\textsuperscript{194} \textit{Id.}
\textsuperscript{195} \textit{See id.}
\textsuperscript{196} \textit{Id.} at 790.
\textsuperscript{197} \textit{Id.} at 792; \textit{see} Becker, \textit{supra} note 180, at 65 (discussing a similar fate for H.R. 3120).
\textsuperscript{198} \textit{See} Becker, \textit{supra} note 180, at 65, 66. Representative Gene Taylor, a Democrat from Mississippi, has sponsored the Multiple Peril Insurance Act of 2009, which would “make available multiple peril coverage for damage resulting from windstorms or floods, and for other purposes.” H.R. 1264, 111th Cong. (2009).
IV. Problems Facing NFIP Wind Addition

A. Increased Financial Instability of NFIP

1. NFIP Debt

The addition of wind coverage to the NFIP will further exacerbate economic problems for an already fiscally unsound program. A 2006 letter from Congressional Budget Office Director Donald Marron to Senator Judd Gregg illustrates that the NFIP’s financial position is unsustainable because FEMA lacks both the resources to cover the Program’s costs and the authority to make changes that can ensure fiscal success. Marron notes that the Program’s current and future obligations for policyholder claims, operating expenses, and debt service are likely to far exceed its income from premiums.

The NFIP is currently $17.3 billion in debt to the U.S. Treasury, with the number likely reaching the $20 billion mark in the near future. The Senate estimates that the interest on NFIP debt alone is more than thirty percent of the premiums received by the Program in 2007. The NFIP’s debt is attributable to its failure to reduce subsidies or encourage prudent building choices in flood-risk zones. Approximately $500 million is lost annually to subsidized properties that fail to pay premiums based on the true risks that they face. Further, repetitive loss properties are a significant drain on the Program.

Adding wind coverage to the NFIP will be inefficient because the Program will likely stray from some of the key priorities of the private wind insurance market. Private market wind insurance policies can be very expensive in high-risk areas. High prices are nothing more than a reflection of the risk facing properties rather than an ineffective

199 Boggs, supra note 178.
201 Id.
203 Id. The Program’s annual interest on debt is estimated at $900 million, while the Program received $2.9 billion in premiums during 2007. Id.
204 See Pham, supra note 2, at 634–35.
206 See King, supra note 15, at 19.
207 Hearings, supra note 182, at 17 (statement of Phillip Swagel).
208 Id.
A key to successful private wind insurance markets is adjusting insurance rates to mirror the true risk posed by wind damage. A federal program providing wind coverage will likely subsidize the price of wind insurance, rather than charging actuarial rates that would be considered unaffordable by many politicians looking to serve the interests of their constituents. The history of the NFIP’s policies illustrates this theory. The Program allows for below actuarial rates to be applied to pre-FIRM buildings, thereby straining the financial viability of the Program. RLPs, accounting for only one percent of all total policies nationwide, sap the NFIP of thirty percent of its total claim payouts. A wind coverage program that is promoted by the federal government would produce subsidized rates that would fall into the same debt pattern as subsidized flood policies.

2. Taxpayer Burden

Taxpayers—most of whom will not benefit from the Program—will be further burdened by the addition of wind coverage to the NFIP. One study found that if a hurricane season comparable to 2005 were to occur again in 2009, the proposals for NFIP reform would disproportionately burden many states. California taxpayers would pay $19 bil-

209 Id.
210 *Hearings*, supra note 182, at 16 (statement of David Maursrad).
211 Id. at 18–19.
212 See Christine M. McMillan, Comment, *Federal Flood Insurance Policy: Making Matters Worse*, 44 Hous. L. Rev. 471, 503–04 (2007). Instead of operating as a true insurance program, the NFIP has been conducted as a welfare program because it fails to find an appropriate balance between risk and premium rates and fails to establish a system in which the insurance provider anticipates liabilities and plans for payouts without borrowing from external sources. Id.
213 See King, supra note 15, at 5, 14.
214 Id. at 20.
215 See *Hearings*, supra note 182, at 18–19 (statement of David Maursrad). While Mr. Maursrad believes that actuarial rates could be achieved, he notes that it is important to realize that these actuarial rates are expensive. *Id.* Since the rates would be based on the number of policies and the premium that would be generated, the pool would be rather small. *Id.* This would push actuarial rates to price levels that most people would consider unaffordable, leaving Congress with the burden of discounting these rates and creating subsidies similar to those in the flood program. *Id.*
217 SHAPIRO & MATHUR, supra note 216, at 1.
lion; New Yorkers $11 billion; $6 billion each for residents of Pennsylvania and New Jersey; and $4 billion each for taxpayers from Massachusetts, Michigan and Virginia.\footnote{218} None of these states would be substantially affected by a hurricane of the magnitude of the 2005 storms.\footnote{219}

If wind coverage is added to the NFIP, and a greater amount of people begin purchasing policies in centralized risk areas, the Program will deal with greater issues surrounding adverse selection.\footnote{220} Providing subsidies to combat the problem of adverse selection will lead to other issues in the NFIP.\footnote{221} Adverse selection occurs when an insurance carrier’s rates are forced higher because the insurer does not have an adequate spread of risk to cover expenses and pay losses.\footnote{222} The demographics that tend to purchase the insurance through the carrier are usually in high-risk areas that are likely to suffer a loss.\footnote{223} As less people can afford the rates of insurance, the policy holders become centralized in areas of high risk, which heightens an issuer’s exposure to potential damage.\footnote{224} The current statistics in the NFIP illustrate the problems of centralized policies.\footnote{225} The states of Florida, Mississippi, Alabama, Louisiana, and Texas account for over sixty percent of the current policies under the NFIP.\footnote{226} Even so, only about twenty percent of homeowners living in flood-prone areas purchase flood insurance.\footnote{227}

B. Private Wind Insurance Is Working

1. Private Insurance Model

The addition of wind coverage to the NFIP will handicap a rather efficient private wind insurance market.\footnote{228} The federal government historically offers insurance, such as flood insurance, when the private market does not offer coverage that the public requires.\footnote{229} The private

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\begin{itemize}
  \item \footnotemark[218] Id.
  \item \footnotemark[219] See id.
  \item \footnotemark[220] Boggs, supra note 178.
  \item \footnotemark[221] Id.
  \item \footnotemark[223] Id.
  \item \footnotemark[224] Id.
  \item \footnotemark[226] Id.
  \item \footnotemark[227] Richmond, supra note 133, at 56.
  \item \footnotemark[228] See Hearings, supra note 182, at 16 (statement of David Maurstad); Shapiro & Mathur, supra note 216, at 1.
  \item \footnotemark[229] Hearings, supra note 182, at 16 (statement of David Maurstad).
\end{itemize}
wind insurance market makes wind insurance readily available; however, the private market has been supplemented by state-sponsored wind pools that augment the availability of private-market policies to homeowners.\textsuperscript{230}

The private insurance industry survives on risk.\textsuperscript{231} A for-profit insurance company employs an educated gamble that the premiums they collect will ensure profit for the company whenever it issues a policy.\textsuperscript{232} By placing the wind insurance market in the hands of the NFIP and the Department of Treasury, the risk of the gamble failing is shifted from the private market, which is the most efficient sector in the insurance arena, to the federal taxpayers.\textsuperscript{233} Taxpayer risk is inappropriate considering that the private insurance industry can better assess appropriate premium levels.\textsuperscript{234} FEMA lacks necessary in-house wind modeling and actuarial expertise that most private insurance market participants have at their disposal to develop, interpret, and translate wind models into premium rates.\textsuperscript{235} For instance, most insurance market participants use computer programs offered by modeling firms to estimate the financial consequences of natural catastrophe scenarios while managing financial exposure.\textsuperscript{236}

2. Refuting Bad-Faith Allegations

Proponents of H.R. 3121 believe that bad faith among WYO insurers is a primary reason that wind coverage should be included under the NFIP.\textsuperscript{237} Their theory is that claim adjusters working for a WYO company on homeowners’ flood and wind claims are not objective and attribute more damage to flood damage rather than wind damage because flood losses are paid out through the federal government rather than the private company.\textsuperscript{238} However, an OIG report has refuted that

\textsuperscript{230} Id.
\textsuperscript{231} See id. at 26–27 (statement of Gary Miller).
\textsuperscript{232} See id. at 27.
\textsuperscript{233} See id.
\textsuperscript{234} See id. at 26–27.
\textsuperscript{236} Id. at 13 n.17.
\textsuperscript{237} See Wind vs. Flood, supra note 5, at 3; Hearings, supra note 182, at 8 (statement of Gene Taylor) (hypothesizing on the mindset of claims adjusters arbitrarily attributing damage to flooding).
\textsuperscript{238} Wind vs. Flood, supra note 56, at 5.
argument. The OIG report also interviewed twenty NFIP adjusters to determine how they conducted their claims adjustments. No adjusters felt pressure from WYOs to falsely attribute damage to flooding. In most cases where a homeowner had both flood and wind policies with one WYO company, the company used a different adjuster for each policy to prevent any conflict of interest in the damage assessment.

Ironically, the addition of wind coverage to the NFIP could produce more conflicts of interest. Hypothetically, WYO insurers will be providing wind and flood coverage under the NFIP, as well as their own separate wind coverage. Officials from the GAO and FEMA agree that WYO insurers face a conflict of interest because of the incentive to sell federally backed multiple peril policies to high-risk customers while targeting their own policies to lower-risk customers.

3. Cost and Coverage Discrepancies

The extension of wind coverage in the NFIP will most likely experience limited participation because the federal program will be more expensive than purchasing a combination of flood insurance through the NFIP and wind insurance through a state-run program. A GAO study concluded that for a residential property in Louisiana, combining the maximum policy limits of the NFIP flood program and the state wind program policy limit would provide a homeowner $1,220,000 in coverage. In comparison, a homeowner would only be able to receive $650,000 through a federal dual wind and flood policy. The disparity is magnified for commercial properties, which would see a difference of $6,590,000 between NFIP flood and state

239 Id. at 6.
240 Id. at 7.
241 Id.
242 Id. at 12.
243 See Analysis of Combined Program, supra note 235, at 11.
244 Id.
245 Id. FEMA noted that it would be difficult to preclude WYO insurers from employing this tactic without prohibiting them from selling their own policies. Id. at 11–12.
247 Analysis of Combined Program, supra note 235, at 22.
248 Id.
wind policies as compared to the federal dual policy. The lower coverage rates available to homeowners under the federal proposal may lead some to obtain additional insurance on top of the federal program. By purchasing extra coverage, homeowners would need to obtain a determination of total wind damage in order to separate their policy, which will lead to confusion, disputes, and litigation that advocates of reform similar to H.R. 3121 are trying to avoid.

C. Enabling Improper Land Use

Political pressure and affordability issues will most likely push federal wind coverage below market value, which in turn will reduce the incentives for people to relocate to safer areas. Two of the primary goals of the NFIP are to encourage state and local governments to make appropriate land use decisions and to guide future development away from locations that are threatened by flood hazards. The NFIP has not achieved either goal to date.

The communities reliant on the potential federal wind insurance will need to realize the dangers and risks that threaten them. While there are many instances of people living in at-risk areas because they could either not afford to live elsewhere or were too unaware of the flood hazard to make informed decisions on habitability, many people in floodplains largely ignore the danger around them. Part of this problem falls squarely on the NFIP, which negligently maintains flood maps and fails to effectively promote mitigation options in at-risk communities.

\[^{249} Id.\]
\[^{250} Id.\] at 27.
\[^{251} Id.\] Gene Taylor writes that the program would, “allow coastal residents to buy insurance and know their hurricane damage would be covered without needing to hire lawyers, engineers, and public adjusters to try to distinguish the wind damage from the flood damage.” Taylor, supra note 8, at 790.
\[^{252} Shapiro & Mathur, supra note 216, at 2.\]
\[^{253} 42 U.S.C. § 4001(e) (2006).\]
\[^{254} See McMillan, supra note 212, at 475 (assessing as negligent the allowance of development in previously devastated areas).\]
\[^{255} Hearings, supra note 182, at 17 (statement of David Maurstad).\]
\[^{256} Martin M. Randall, Coastal Development Run Amuck: A Policy of Retreat May Be the Only Hope, 18 J. Envil. L. & Litig. 145, 152 (2003).\]
\[^{257} See id. at 154. James L. Witt, then FEMA Director, announced that “[p]eople need to accept the responsibility and the consequences of their choice to live in high-risk areas.” Id.\]
\[^{258} J. Robert Hunter, False Claims, N.Y. TIMES, May 4, 2006, at A31, available at http://www.nytimes.com/2006/05/04/opinion/04hunter.html?_r=1 (showing that the 100-year flood levels predicted on the old maps for Hancock County, Mississippi are about ten feet below what new maps forecast).\]
high-risk areas. Communities themselves must bear part of the blame because ultimate authority over the management of the programs lies in their hands. NFIP participation statistics illustrate that for whatever reason, consumers tend to underestimate the risks they face.

D. Moving Forward Without Wind

There are many necessary improvements that must be made to the NFIP before the inclusion of wind insurance is considered. Most importantly, the NFIP’s priority should be regaining financial stability without accruing additional liability. The first step towards achieving financial stability will be to require correct administration of the Program. FEMA must update its flood risk maps to ensure that taxpayers are not subsidizing construction in unsafe areas. The Program must strive for actuarially sound rates, which will require sufficient premiums to build reserves for expected future flood losses. The main source of financial trouble for the NFIP—repetitive loss properties—must be heavily reduced or eliminated if the Program is to rebound from the debt it currently faces.

Instead of adding wind coverage to the NFIP, Congress should focus on forgiving the NFIP’s current debt and encourage safety-oriented reform solutions for the Program. By forgiving the Program’s debt, the NFIP can look towards the future by building reserves for the next inevitable storm. By encouraging safety-oriented solutions for the NFIP,

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259 McMillan, supra note 212, at 499 (“Congressional findings indicate that the availability of insurance often determines the practicability of development.”).
261 See Analysis of Combined Program, supra note 235, at 19 (opining that consumers tend to underestimate their risk of catastrophic loss); Richmond, supra note 133, at 56 (explaining that in some of the areas of Mississippi that were hardest hit by Katrina, fewer than one in ten homes had flood insurance); Scales, supra note 73, at 17 (pondering why so few homeowners choose to purchase flood insurance).
262 See Letter to Maxine Waters, supra note 246, at 2.
263 Id. at 4.
264 See Hunter, supra note 258.
265 Id.; Letter to Maxine Waters, supra note 246, at 3.
267 See McMillan, supra note 212, at 504–05.
268 Becker, supra note 180, at 65.
270 Becker, supra note 180, at 65.
such as strictly enforcing community land-use measures, Congress can ensure that when the next storm hits the gulf coast, homeowners will be better prepared to handle any damage that occurs.\textsuperscript{271}

Leaving state wind programs and the private insurance market as the primary sources of wind coverage will benefit homeowners and the NFIP.\textsuperscript{272} Homeowners will benefit because they will be able to obtain higher levels of coverage through state wind programs than they will through the proposed federal model.\textsuperscript{273} Potentially, many homeowners could be left inadequately insured under the federal program.\textsuperscript{274} The NFIP will profit because FEMA administrative resources will not be drained in implementing a new program.\textsuperscript{275} Instead of stretching its workforce thin, FEMA can dedicate its work to correcting the management and financial problems that currently plague the NFIP.\textsuperscript{276}

**Conclusion**

The National Flood Insurance Program is essential for the protection and insurance of millions of American homeowners who stand in the path of impending natural disasters. Following the storms of 2005, the NFIP has experienced financial failure which threatens its very existence. Now is the time that Congress must look to rectify the Program so that it can achieve fiscal stability. This entails re-developing outdated flood maps and strengthening mitigation measures. However, rectifying the Program cannot include the addition of wind coverage. Adding the additional liability of wind coverage to the NFIP will exacerbate lingering problems such as subsidized coverage that fails to meet actuarial standards, adverse selection, and improper land use. While insuring that people are safe from high winds and flooding should be a priority for legislators, attempting to do so by subsidizing risky development at the expense of federal taxpayers is fiscally unsound and unsafe in practice.

\textsuperscript{271} See Americans for Smart Natural Catastrophe Policy, supra note 267; Letter to Maxine Waters, supra note 246, at 3.

\textsuperscript{272} See Analysis of Combined Program, supra note 235, at 3, 22.

\textsuperscript{273} Id. at 22. The difference between the average combined NFIP flood and state wind program policy limit and the federal flood and wind program coverage limit would be $1,078,750. Id.

\textsuperscript{274} Id. at 27.

\textsuperscript{275} Id. at 3.

\textsuperscript{276} Id.