Statement for the Record

United States House of Representatives Financial Services Committee
Subcommittee on Housing and Insurance
Hearing: *How Do We Encourage Greater Flood Insurance Coverage in America?*

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Chair Davidson, Ranking Member Cleaver, and other members of the Subcommittee,

Thank you for the opportunity to contribute to this important conversation on encouraging broader flood insurance coverage. My name is Hannah Perls, and I am a Staff Attorney with the Environmental & Energy Law Program (EELP) at Harvard Law School. I direct EELP's equity and environmental justice portfolio, including research on federal disaster preparedness, response, and recovery programs.

Flooding is the most common and costly environmental disaster in the U.S., causing more than $85 billion in damages in 2021 alone.[1] Yet most standard insurance policies do not include coverage for flood-related damages. This insurance "protection gap" is largest among low- and moderate-income households, particularly in the highest-risk areas.[2]

Achieving broader flood insurance coverage nationwide will require expanding affordable options for low- and moderate-income households while mitigating current and future risk. I urge Congress to consider the following actions and adjustments to expand coverage options, improve mitigation and buyout programs for repetitive loss properties and ensure taxpayer dollars are spent efficiently and equitably:

- Establish a permanent means-tested assistance program under the National Flood Insurance Program (NFIP) for current and prospective low- and moderate-income policyholders.
- Consider waiving "obtain and maintain" requirements for low-income, uninsured households so they can use federal disaster assistance to mitigate future flood risk.
- Encourage common-sense mitigation measures, including the use of NFIP funds to finance or reimburse local buyout programs.
- Improve the transparency and oversight of private insurance companies participating in FEMA's Write Your Own program.

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[1] Forbes Tompkins & Brian Watts, *Flooding Is Nearly a Daily Occurrence Throughout the U.S.*, PEW (Dec. 15, 2022), https://www.pewtrusts.org/en/research-and-analysis/articles/2022/12/15/flooding-is-nearly-a-daily-occurrence-throughout-the-us.

[2] *An Affordability Framework for the National Flood Insurance Program*, DEP'T OF HOMELAND SEC. 6 (Apr. 17, 2018), https://www.fema.gov/sites/default/files/2020-05/Affordability_april_2018.pdf.

1. **Establish a means-tested assistance program to close insurance protection gaps for low- and moderate-income households.**

Low-income households in the U.S. are more exposed to flood risk but often unable to afford flood insurance. More than half of uninsured residents living in special flood hazard areas (SFHAs) qualify as "low-income."[3] Yet the NFIP does not offer affordable coverage options to these communities. According to FEMA's National Advisory Council in 2020, the NFIP "inadvertently assists the wealthier segment of the population by serving only those who can afford to buy flood insurance." [4]

There have been persistent calls for Congress to resolve this protection gap by establishing a permanent means-tested assistance program under the NFIP. Under the National Flood Insurance Act (NFIA) as amended, FEMA lacks explicit statutory authority to establish a permanent program under which low-and moderate-income policyholders receive a graduated risk premium discount.[5] While Risk Rating 2.0 eliminated the cross-subsidy from lower-valued homes to higher-valued homes by adjusting for the home's value, Risk Rating 2.0 does not account for income.[6] The Department of Homeland Security (DHS) recently proposed draft statutory language to establish a means-tested assistance program as part of their NFIP reform proposal submitted to Vice President Harris on May 11, 2022.[7] The program would allow FEMA to offer income-scaled discount rates while communicating the "full-risk price" so policyholders understand the property's true flood risk. The program would also cap eligibility at 400 percent of the Federal Poverty Level and scale with families' economic needs to avoid a benefits cliff.

DHS' proposal is an important first step towards creating a means-tested assisted program. In addition to these parameters, the program should require households to certify that their net worth does not exceed a preestablished threshold to exclude extremely high net worth households with zero or very low incomes.[8] The program should also explicitly allow households to participate regardless of their current policy status. This requirement is essential to

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[3] *Id.* at 76.

[4] *November 2020 FEMA National Advisory Council Report to the Administrator*, FEMA 12 (Nov. 2020), https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf.

[5] Under the NFIA as amended, FEMA can charge "less than the estimated risk premium rates . . . where necessary", 42 U.S.C. § 4015(a), including where doing so is "consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase such insurance", 42 U.S.C. § 4015(b). While the list of factors to be considered in rate-setting does not explicitly include income or cost burden, those factors must only be considered "insofar as practicable" and there is no statutory language or caselaw indicating that this list is exclusive. *Id*. However, this authority is applied on a case-by-case basis, and FEMA has consistently stated that legislative action is required to establish and fund a permanent means-tested assistance program under the NFIP. *See, for example.*, *FEMA Releases Affordability Framework for the National Flood Insurance Program*, FEMA (Apr. 17, 2018), https://www.fema.gov/press-release/20210318/fema-releases-affordability-framework-national-flood-insurance-program.

[6] *See Hearing on Reauthorization and Reform of the National Flood Insurance Program: Hearing Before the Subcomm. on Housing and Insurance of the H. Comm. on Financial Services*, 117th Cong. 6 (2022) (statement of Carolyn Kousky, Executive Director, Wharton Risk Center, University of Pennsylvania) [hereinafter Statement of C. Kousky].

[7] *FEMA Flood Insurance Reform Proposal*, FEMA (May 11, 2022), https://www.fema.gov/sites/default/files/documents/fema_flood-insurance-reform-proposal_5242022.pdf.

[8] *See* Statement of C. Kousky, *supra* note 6 at 7.

expanding coverage to low-income households who currently lack insurance due to affordability concerns.

2. **Consider mechanisms to waive "obtain and maintain" insurance requirements for low-income recipients of federal disaster assistance.**

The Flood Disaster Protection Act of 1973 amended the NFIA to require people who receive federal flood-related disaster assistance to purchase insurance on any property that is insurable under the NFIP and located in a special flood hazard area (SFHA).[9] This means that SFHA residents who receive federal disaster assistance must "obtain and maintain" flood insurance coverage, or else be barred from receiving future assistance.[10]

"Obtain and maintain" requirements are designed to incentivize people living in high-risk areas to purchase flood insurance and thus rely on post-disaster insurance payouts rather than federal aid. However, these requirements have a perverse effect on low-income households in high-risk areas whose residents cannot afford flood insurance. By barring these residents from future disaster assistance that could be used to mitigate risk to their home or help them move to safer ground, "obtain and maintain" requirements can trap these residents in unsafe housing.

In its 2022 statutory report on the federal response to Hurricanes Harvey and María, the U.S. Commission on Civil Rights explained how these requirements affect low-income households in Puerto Rico:

> "[O]ver a majority of homes [in Puerto Rico] reside in a floodplain and homeowners are often denied federal assistance to repair or rebuild their homes unless they carry flood insurance . . . This means that FEMA can deny assistance to homeowners who do not carry flood insurance, but these homeowners – even if they could afford the insurance – may not be granted policies in the first place; ultimately leaving them without any federal aid to repair or rebuild."[11]

To address this problem, Congress could consider adding language to Section 4012a(a) of the NFIA that would allow FEMA to waive the "obtain and maintain" requirement for qualifying low-income households, and require FEMA to issue clarifying regulations or guidance. That guidance could define eligibility criteria, the duration of the waiver, and options for renewal. In developing this language, Congress should consult with FEMA, low-income households vulnerable to flooding, and legal service organizations assisting those communities. Importantly,

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[9] *See* 42 U.S.C. § 4012a(a) (barring federal agencies from approving financial assistance "for acquisition or construction purposes" in SFHAs where NFIP policies are available unless "the building or mobile home or personal property to which such financial assistance relates is covered by flood insurance . . .the requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property"); 44 C.F.R. § 206.110(k).

[10] FEMA's implementing regulations define "financial assistance for acquisition or construction purposes" as federal assistance used to "buy, receive, build, repair, or improve insurable portions of a home and/or to purchase or repair insurable contents". 44. C.F.R. § 205.110(k)(1).

[11] *Federal Response to Hurricanes Harvey and Maria*, U.S. COMM'N ON CIVIL RTS. 209 (2022), https://www.usccr.gov/files/2022-09/2022-statutory-report-fema.pdf. Under § 1316 of the NFIA, FEMA can deny flood insurance coverage for any property found to be in violation of State or local floodplain management regulations. *Id.* at 209, n. 1562.

granting such a waiver would not change the duty to notify a potential buyer that the property is subject to "obtain and maintain" requirements.[12]

3. **Encourage the use of NFIP funds to support common-sense mitigation, including financing or reimbursing buyouts.**

Historically, repetitive loss properties account for one percent of NFIP policies, but are responsible for 25 to 30 percent of flood claims.[13] Despite significant federal investments in mitigation programs, including property acquisitions or "buyouts", the number of nonmitigated repetitive loss properties has increased over time.[14] One reason for this increase is that buyouts are notoriously slow, complex, and inequitable.[15] Low-income homeowners in particular are most willing to accept a buyout immediately post-disaster, yet federal funding for buyouts often takes years to materialize.[16] As a result, homeowners may use insurance payouts or other assistance to repair or rebuild, and then demolish the home when buyout funds are available.

Making federal buyout funds available immediately post-disaster could prevent financial waste and facilitate more buyouts in high-risk areas. The Association of State Floodplain Managers has recommended allowing NFIP funds, including Increased Cost of Compliance funds, to be used to finance the cost of building acquisition and removal in these high-risk areas.[17] Given the significant pre-disaster work required for the successful implementation of buyout programs, applicants seeking these expedited federal buyout funds could be required to demonstrate a pre-disaster buyout planning process.[18] Congress should consider best practices established by buyout program managers and participating community members when deciding how to make NFIP and other federal funds available to efficiently finance buyout programs.[19]

4. **Improve transparency and oversight of FEMA's Write Your Own program.**

Commitments to expand flood insurance coverage must be accompanied by enhanced oversight of FEMA's Write Your Own (WYO) program to ensure the most efficient and equitable use of taxpayer dollars. FEMA established the WYO program in 1983 to allow private insurers to act as

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[12] 42 U.S.C. § 5154a(b).
[13] *Repeatedly Flooded Properties Cost Billions*, PEWTRUSTS.ORG 2 (Oct. 2016), https://www.pewtrusts.org/-/media/assets/2016/10/repeatedly_flooded_properties_cost_billions.pdf.
[14] GAO-20-508, NATIONAL FLOOD INSURANCE PROGRAM: FISCAL EXPOSURE PERSISTS DESPITE PROPERTY ACQUISITIONS (June 25, 2020).
[15] *Innovating to Make Home Buyouts Faster, Easier, and Fairer: Key Learnings from Workshops with Buyout Managers from Across the United States* (June 2022), https://drive.google.com/file/d/1H2YLKhzhC-2eOSVAd0B3pvMoHvSvgjwU/view.
[16] These funds primarily come from FEMA's Hazard Mitigation Grant Program and HUD's Community Development Block Grant Disaster Recovery (CDBG-DR) program.
[17] *ASFPM Detailed Priorities for FY23: NFIP Reauthorization and Reform*, ASS'N OF STATE FLOODPLAIN MANAGERS (March 2, 2023), https://asfpm-library.s3.us-west-2.amazonaws.com/NFIP/ASFPM_priorities_for_NFIP_2023.pdf.
[18] Statement of C. Kousky at 10.
[19] *See, for example*, *Innovating to Make Home Buyouts Faster, Easier, and Fairer*, *supra* note 15. This white paper describes the outcomes of a series of workshops with buyout managers and administrators across the country to share best practices and identify common challenges in buyout programs. The workshops were convened by the Natural Resources Defense Council (NRDC) in coordination with staff from FEMA. *See also*, *Assisted Resettlement and Community Viability on Louisiana's Gulf Coast: Proceedings of a Workshop*, NAT'L ACADEMIES OF SCIENCES, ENG'G, AND MED. (2023), https://doi.org/10.17226/26774.

"fiscal agents of the federal government" after those companies abandoned the flood insurance market following the Great Mississippi Flood of 1927.[20] WYO companies market, sell, and write flood insurance policies under the NFIP, but bear none of the risk associated with those policies. WYO companies also arrange for adjustment, settlement, payment, and defense of all claims arising from policies sold through the program. In return, companies receive, on average, a 30 percent commission, and FEMA reimburses companies for claims paid to property owners and related expenses.[21] Thus, WYO companies are incentivized to maximize profits through the sale and management of these flood insurance policies, while bearing none of the financial risk.

In a 2016 report, the DHS Office of the Inspector General found that FEMA "does not provide adequate oversight" of the WYO program, and is therefore "unable to ensure that WYO companies are properly implementing the NFIP". As a result, "FEMA's NFIP funds may be at risk for fraud, waste, abuse, and mismanagement."[22] The Government Accountability Office (GAO) made similar findings in 2007, 2009, and again in 2017, finding that FEMA lacked the data necessary to determine how much profit WYO companies make and whether current compensation payments are appropriate.[23]

Because the WYO is authorized via regulation, Congress can play an important oversight role and direct FEMA to implement simple, yet effective, transparency measures. Community-based organizations and legal service centers have recommended capping WYO compensation at the rate FEMA pays to service policies it directly underwrites, or 22.46 percent of written premiums, as also recommended by the GAO.[24] These same organizations suggest that potential savings from the cap could then be redirected to finance a means-tested program.[25] The Association of State Floodplain Managers recommends imposing additional requirements on private flood insurance companies, including those participating in the WYO program. These requirements include charging private insurance companies an "equivalency fee" to cover mapping and floodplain management costs, ensuring that WYO policies are sold only in NFIP participating communities, and directing FEMA to establish a repository for all flood insurance claims data, both public and private, to share with communities and states.[26]

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[20] Rebecca Elliott, UNDERWATER: LOSS, FLOOD INSURANCE, AND THE MORAL ECONOMY OF CLIMATE CHANGE IN THE UNITED STATES 65 (2021).
[21] *Id.*
[22] *FEMA Does Not Provide Adequate Oversight of Its National Flood Insurance Write Your Own Program*, DEP'T OF HOMELAND SEC. OFF. OF THE INSPECTOR GEN. 4 (March 8, 2016), https://www.oig.dhs.gov/reports/2016-03/fema-does-not-provide-adequate-oversight-its-national-flood-insurance-write-your.
[23] GAO-17-36, FLOOD INSURANCE: FEMA NEEDS TO ADDRESS DATA QUALITY AND CONSIDER COMPANY CHARACTERISTICS WHEN REVISING ITS COMPENSATION METHODOLOGY (Jan. 9, 2017).
[24] *But Next Time: Storm Survivors Demand Overhaul of Disaster Recovery System* 40 (Oct. 2022), https://www.texasappleseed.org/sites/default/files/But+Next+Time_Report%20(1).pdf. This paper compiles recommendations to reform the federal disaster response and recovery system from fourteen community-based organizations and legal service centers with extensive experience navigating disasters. These organizations include: Ayuda Legal Puerto Rico (Puerto Rico), Center for Habitat Construction (Puerto Rico), Fair Share Housing Center (New Jersey), Florida Rising (Florida), HousingNOLA (Louisiana), Houston Organizing Movement for Equity (Texas), Jobs With Justice (national), Maria Fund (Puerto Rico), New Jersey Organizing Project and Jew Jersey Research Project (New Jersey), PolicyLink (national), Power Coalition for Equity and Justice (Louisiana), Taller Salud (Puerto Rico), Unemployed Workers United (national), and Workers Defense Project (Texas).
[25] *Id.* at 40.
[26] *ASFPM Detailed Priorities for FY23: NFIP Reauthorization and Reform*, *supra* note 17.