

114TH CONGRESS
1ST SESSION

S. 2324

To provide for transparency, accountability, and reform of the National Flood Insurance Program.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2015

Mrs. GILLIBRAND (for herself and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for transparency, accountability, and reform of the National Flood Insurance Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Flood Insurance
5 Transparency and Accountability Act of 2015”.

6 **SEC. 2. FLOOD INSURANCE TRANSPARENCY, ACCOUNT-**
7 **ABILITY, AND REFORM.**

8 (a) **REPORTS AND OTHER CLAIM-RELATED DOCU-**
9 **MENTS.**—Section 1312 of the National Flood Insurance

1 Act of 1968 (42 U.S.C. 4019) is amended by adding at
2 the end the following:

3 “(d) FINAL ENGINEERING REPORTS.—The Adminis-
4 trator shall require that, in the case of any on-site inspec-
5 tion of a property by an engineer for the purpose of assess-
6 ing any claim for losses covered by a policy for flood insur-
7 ance coverage provided under this title, the final engineer-
8 ing report shall be provided to the insured under the pol-
9 icy, as follows:

10 “(1) TIMING.—The final engineering report
11 may not be transmitted to any other person, em-
12 ployer, agency, or entity, before it is transmitted to
13 the insured.

14 “(2) PROHIBITION ON ALTERATIONS; CERTIFI-
15 CATION.—The final engineering report may not in-
16 clude alterations by, or at the request of, anyone
17 other than the responsible in charge for such report
18 and shall include a certification, signed by the re-
19 sponsible in charge for the report, that it does not
20 contain any such alterations.

21 “(3) TRANSMITTAL.—The final engineering re-
22 port shall be transmitted to the insured in a manner
23 as the Administrator shall provide that provides rea-
24 sonable assurance that it was transmitted directly to
25 the insured by the responsible in charge.

1 “(4) REPORTS COVERED.—For purposes of this
2 subsection, the term ‘final engineering report’ means
3 an engineering report, survey, or other document in
4 connection with such claim that—

5 “(A) is based on such on-site inspection;

6 “(B) contains final conclusions with re-
7 spect to an engineering issue or issues involved
8 in such claim; and

9 “(C) is signed by the responsible in charge
10 or affixed with the seal of such responsible in
11 charge, or both.

12 “(e) CLAIMS ADJUSTMENT REPORTS.—The Adminis-
13 trator shall require that, in the case of any on-site inspec-
14 tion of a property by a claims adjustor for the purpose
15 of assessing any claim for losses covered by a policy for
16 flood insurance coverage provided under this title, any re-
17 port shall be provided to the insured under the policy, as
18 follows:

19 “(1) TIMING.—Such report may not be trans-
20 mitted to any other person, employer, agency, or en-
21 tity, before it is transmitted to the insured.

22 “(2) PROHIBITION ON ALTERATIONS; CERTIFI-
23 CATION.—The report may not include alterations by,
24 or at the request of, anyone other than such pre-
25 parer and shall include a certification, signed by the

1 preparer of the report, that it does not contain any
2 such alterations.

3 “(3) TRANSMITTAL.—The report shall be trans-
4 mitted to the insured in a manner as the Adminis-
5 trator shall provide that provides reasonable assur-
6 ance that it was transmitted directly to the insured
7 by the preparer.

8 “(4) REPORTS COVERED.—For purposes of this
9 subsection, the term ‘report’ means any report or
10 document in connection with such claim that is
11 based on such on-site inspection by the claims adjus-
12 tor, including any adjustment report and field re-
13 port. Such term also includes any draft, preliminary
14 version, or copy of any such report and any amend-
15 ments or additions to any such report. Such term
16 does not include any engineering report, as such
17 term is defined for purposes of subsection (d).

18 “(f) OTHER CLAIM-RELATED DOCUMENTS.—

19 “(1) DEFINITION OF CLAIM-RELATED DOCU-
20 MENT.—In this subsection, the term ‘claim-related
21 document’ means any document, other than a final
22 engineering report (as defined in subsection (d)) or
23 a report (as defined in subsection (e)), that was pre-
24 pared for the purposes of assessing a claim for

1 losses covered by flood insurance made available
2 under this title, including—

3 “(A) a repair and replacement estimate or
4 bid;

5 “(B) an appraisal;

6 “(C) a scope of loss;

7 “(D) a drawing;

8 “(E) a plan;

9 “(F) a report, including a draft report pre-
10 pared based on an on-site inspection of a prop-
11 erty conducted by a claims adjustor or engineer;

12 “(G) a third-party finding on the amount
13 of loss, amount of covered damage, or cost of
14 repairs; and

15 “(H) any other valuation, measurement, or
16 loss adjustment calculation of the amount of
17 loss, amount of covered damage, or cost of re-
18 pairs.

19 “(2) AVAILABILITY OF DOCUMENTS.—Any enti-
20 ty servicing a claim under the national flood insur-
21 ance program—

22 “(A) shall retain each claim-related docu-
23 ment prepared by or for the entity;

24 “(B) upon request by a claimant or an au-
25 thorized representative of a claimant, shall pro-

1 vide to the claimant or representative a copy of
2 any claim-related document described in sub-
3 paragraph (A) that pertains to the claimant;
4 and

5 “(C) not later than 30 days after receiving
6 notice of a claim, shall notify the claimant that
7 the claimant or an authorized representative of
8 the claimant may obtain, upon request, a copy
9 of any claim-related document described in sub-
10 paragraph (A) that pertains to the claimant.”.

11 (b) JUDICIAL REVIEW.—

12 (1) GOVERNMENT PROGRAM WITH INDUSTRY
13 ASSISTANCE.—Section 1341 of the National Flood
14 Insurance Act of 1968 (42 U.S.C. 4072) is amended
15 by striking “within one year after the date of mail-
16 ing of notice of disallowance or partial disallowance
17 by the Administrator” and inserting the following:
18 “not later than the expiration of the 2-year period
19 beginning upon the date of the occurrence of the
20 losses involved in such claim or, in the case of a de-
21 nial of a claim for losses that is appealed to the Ad-
22 ministrator, not later than (1) the expiration of the
23 90-day period beginning upon the date of a final de-
24 termination upon appeal denying such claim in

1 whole or in part, or (2) the expiration of such 2-year
2 period, whichever is later”.

3 (2) INDUSTRY PROGRAM WITH FEDERAL FINAN-
4 CIAL ASSISTANCE.—Section 1333 of the National
5 Flood Insurance Act of 1968 (42 U.S.C. 4053) is
6 amended by striking “within one year after the date
7 of mailing of notice of disallowance or partial dis-
8 allowance of the claim” and inserting the following:
9 “not later than the expiration of the 2-year period
10 beginning upon the date of the occurrence of the
11 losses involved in such claim or, in the case of a de-
12 nial of a claim for losses that is appealed to the Ad-
13 ministrator, not later than (1) the expiration of the
14 90-day period beginning upon the date of a final de-
15 termination upon appeal denying such claim in
16 whole or in part, or (2) the expiration of such 2-year
17 period, whichever is later”.

18 (c) FLOOD INSURANCE ADVOCATE.—Section 24(b) of
19 the Homeowner Flood Insurance Affordability Act of 2014
20 (42 U.S.C. 4033(b)) is amended—

21 (1) in paragraph (4), by striking “and” at the
22 end;

23 (2) in subparagraph (5), by striking the period
24 at the end and inserting “; and”; and

25 (3) by adding at the end the following:

1 “(6) provide a direct point of contact for policy-
2 holders under the National Flood Insurance Pro-
3 gram to discuss the status of their claim appeals
4 and the basis of the decision to initially deny their
5 claims.”.

6 (d) RECORDS AND REVIEWS.—Section 1348 of the
7 National Flood Insurance Act of 1968 (42 U.S.C. 4084)
8 is amended by adding at the end the following:

9 “(c) ANNUAL REVIEW.—The Administrator shall
10 conduct an annual review of each private entity partici-
11 pating in the national flood insurance program, including
12 any company that has entered into a contract with a Write
13 Your Own insurance company to provide any service re-
14 lated to a policy or claim under the national flood insur-
15 ance program, including adjusting, engineering, and legal
16 services, to ensure compliance with this title and with all
17 policies and procedures established by the Administrator
18 to prevent fraud and protect policyholders.”.

19 (e) PUBLICATION OF CLAIMS DATA.—Section 1312
20 of the National Flood Insurance Act of 1968 (42 U.S.C.
21 4019), as amended by subsection (a), is amended by add-
22 ing at the end the following:

23 “(g) PUBLICATION OF CLAIMS DATA.—Not later
24 than 1 year after the date of enactment of the Flood In-
25 surance Transparency and Accountability Act of 2015, the

1 Administrator shall create and maintain a publically
2 searchable online database that includes, with respect to
3 claims filed under the national flood insurance program
4 after that date of enactment—

5 “(1) the number of claims filed each month,
6 broken down by State;

7 “(2) the number of claims paid in part or in
8 full;

9 “(3) the number of claims denied and the rea-
10 sons cited for each denial; and

11 “(4) the number of claim denials appealed, the
12 number of claim denials upheld on appeal, and the
13 number of claim denials overturned on appeal.”.

14 (f) ENGINEERING AND LITIGATION COSTS.—Section
15 1311 of the National Flood Insurance Act of 1968 (42
16 U.S.C. 4018) is amended by adding at the end the fol-
17 lowing:

18 “(c) ENGINEERING AND LITIGATION COSTS.—The
19 Administrator shall—

20 “(1) in order to ensure that taxpayer funds are
21 being appropriately expended, establish clear guide-
22 lines and standards to require that any engineering
23 or litigation cost billed to the national flood insur-
24 ance program by a Write Your Own insurance com-
25 pany is justified on a case-by-case basis, both by the

1 entity that originally incurs the cost and by the
2 Write Your Own Company; and

3 “(2) enforce compliance with the guidelines and
4 standards established under paragraph (1).”.

5 (g) EARTH MOVEMENT.—Section 1306 of the Na-
6 tional Flood Insurance Act of 1968 (42 U.S.C. 4013) is
7 amended by adding at the end the following:

8 “(e) EARTH MOVEMENT.—A flood insurance claim
9 filed under this title for damage to or loss of property shall
10 not be denied based on the earth movement exclusion in
11 the Standard Flood Insurance Policy if the claim is filed
12 as the result of a flood, including a claim for damage to
13 or loss or property caused by earth movement that was
14 caused by a flood.”.

15 (h) APPEALS PROCESS.—Section 205 of the Bun-
16 ning-Bereuter-Blumenauer Flood Insurance Reform Act
17 of 2004 (42 U.S.C. 4011 note) is amended—

18 (1) by striking “Not later than” and inserting

19 “(a) IN GENERAL.—Not later than”; and

20 (2) by adding at the end the following:

21 “(b) REVIEW OF APPEALS.—

22 “(1) CLARITY.—The Director shall ensure that
23 the appeals process established under subsection (a)
24 has clear rules, forms, and deadlines.

1 “(2) NOTIFICATION UPON INITIAL DENIAL OF
2 CLAIM.—The Director shall ensure that a claimant
3 is provided with the rules, forms, and deadlines de-
4 scribed in paragraph (1) at the time a claim is first
5 denied in full or in part, including—

6 “(A) the effective date of the denial;

7 “(B) a justification for the denial, includ-
8 ing supporting documentation;

9 “(C) the date on which the period of limi-
10 tation for instituting an action against the Ad-
11 ministrator on the claim under section 1341
12 will end; and

13 “(D) a point of contact through which the
14 claimant can directly discuss an appeal with a
15 representative of the Federal Emergency Man-
16 agement Agency.

17 “(3) NOTIFICATION UPON DENIAL OF AP-
18 PEAL.—If the Administrator denies an appeal filed
19 by a policyholder, the Administrator shall include
20 with the notice of denial an explanation of the pol-
21 icyholder’s legal options for further challenging the
22 denial.”.

23 (i) DEFINITION OF WRITE YOUR OWN.—Section
24 1370(a) of the National Flood Insurance Act of 1968 (42
25 U.S.C. 4121(a)) is amended—

1 (1) in paragraph (14), by striking “and” at the
2 end;

3 (2) in paragraph (15), by striking the period at
4 the end and inserting “; and”; and

5 (3) by adding at the end the following:

6 “(16) the term ‘Write Your Own’ means the co-
7 operative undertaking between the insurance indus-
8 try and the Federal Insurance and Mitigation Ad-
9 ministration which allows participating property and
10 casualty insurance companies to write and service
11 standard flood insurance policies.”.

12 **SEC. 3. REPORTS TO CONGRESS.**

13 (a) DEFINITIONS.—In this section—

14 (1) the term “National Flood Insurance Pro-
15 gram” means the program established under the Na-
16 tional Flood Insurance Act of 1968 (42 U.S.C. 4001
17 et seq.);

18 (2) the term “Task Force” means the National
19 Flood Insurance Program Transformation Task
20 Force established by the Federal Emergency Man-
21 agement Agency; and

22 (3) the term “Write Your Own” has the mean-
23 ing given the term in section 1370(a) of the Na-
24 tional Flood Insurance Act of 1968 (42 U.S.C.
25 4121(a)), as amended by section 2(i).

1 (b) REPORT TO CONGRESS ON ACCOUNTABILITY FOR
2 DEFRAUDING POLICYHOLDERS.—Not later than 90 days
3 after the date of enactment of this Act, the Secretary of
4 Homeland Security shall submit to Congress a report on
5 specific actions the Department of Homeland Security will
6 take to identify individuals and private entities that have
7 engaged in activities to defraud policyholders under the
8 National Flood Insurance Program following Superstorm
9 Sandy and prevent those individuals and private entities
10 from continuing to receive Federal funding through—

11 (1) contracts with, or employment by, a Write
12 Your Own insurance company; or

13 (2) employment by the Federal Emergency
14 Management Agency.

15 (c) REPORT TO CONGRESS ON RECOMMENDATIONS
16 OF THE NFIP TRANSFORMATION TASK FORCE.—Not
17 later than 1 year after the date of enactment of this Act,
18 the Administrator of the Federal Emergency Management
19 Agency shall submit to Congress a report that describes—

20 (1) the recommendations of the Task Force for
21 reforming the National Flood Insurance Program;

22 (2) a timeline for implementing the rec-
23 ommendations of the Task Force; and

- 1 (3) any recommendations of the Task Force
- 2 that require additional legislation.

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