The Flood Insurance Crisis:

A Comprehensive Breakdown of Rising Flood Insurance Premiums

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ABSTRACT

As every Louisianian knows, the end of summer marks the beginning of hurricane season. While we have all battened down the hatches and endured our share of storms, we understand the enormous destruction that they can inflict. We also understand the immense effort and cost required to rebuild the communities that are impacted by such storms.

For the last half century, the federal government has ensured that American homeowners have access to affordable flood insurance through the National Flood Insurance Program ("NFIP"). It is the primary, and in some cases the sole, source of flood insurance for many communities. Areas vulnerable to flooding are identified, and homeowners in those regions are offered insurance policies through the program. In addition, communities that participate in NFIP are incentivized to take on flood mitigation projects to reduce the risk of future flooding. These measures are invaluable in making buildings and other infrastructure more resilient and saving billions of dollars from potential flood damage.

However, Federal Emergency Management Agency ("FEMA"), the federal administrator of NFIP, has adopted measures to increase the cost of insurance premiums in an attempt to overhaul the program. I argue that such actions run contrary to Congressional intent and exceed their statutory authority. This paper begins by describing NFIP and major developments since its implementation. It then provides an analysis of key features, particularly through the lens of the affordability requirement under the National Flood Insurance Act of 1968. Finally, this paper maintains that FEMA must properly weigh the interests of affordability along with other concerns in order for NFIP to fulfill its statutory mandate.

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I. INTRODUCTION

The National Flood Insurance Program ("NFIP") was created pursuant to the National Flood Insurance Act of 1968 (the "Flood Act")[1] on the basis that it was "uneconomic for the private insurance industry alone" to meet the demand for flood insurance policies with "reasonable terms and conditions."[2] Where an affordable private market was lacking, Congress determined that the federal government could step in to alleviate "an increasing burden on the Nation's resources" and to "shar[e] the risk of flood losses," thereby transferring to the federal government some of the financial burdens borne by individual policyholders.[3] NFIP was Congress's solution to these market inefficiencies.[4]

NFIP has largely been effective in providing coverage against flood risk. In terms of size, it is the largest provider of flood insurance for residential properties in the United States, providing 4.7 million insurance policies across 56 states and other jurisdictions.[5] By one estimate, NFIP prevents over $2 billion in potential flood losses each year.[6] NFIP has also supported the construction of preventive measures by awarding grants for flood mitigation projects, including the "elevation, relocation, demolition, or flood proofing of structures."[7] For the 2023 fiscal year, $800 million in grants were distributed for such mitigation projects, which includes $520 million allocated for localized flood risk reduction projects and another $220 million for individual flood mitigation projects.[8]

Notwithstanding the foregoing, NFIP has struggled to balance the competing interests of controlling costs and keeping premiums affordable. The trend has been to favor the former at the risk of driving up prices and driving out participants. In a misguided attempt to modernize the program, Federal Emergency Management Agency ("FEMA") has adopted measures that have limited the availiabilty of insurance policies and increased the price of premiums, in some cases making them cost-prohibitive for homeowners. Not least of these is Risk Rating 2.0, FEMA's new rating system that has pushed prices even higher despite community concerns of affordability.

This paper provides an overview of NFIP and highlights its most important features and developments. It evaluates where the program has been successful and identifies areas that are inconsistent with what Congress intended in passing the Flood Act. This paper maintains that in

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[1] Pub. L. No. 90-448, 82 Stat. 572 (1968) (codified at 42 U.S.C. § 4001 *et seq.*).
[2] *Id.* § 4001(b).
[3] *Id.* § 4001(a).
[4] *See id.* § 4001(c).
[5] *See* DIANE HORN, CONG. RSCH. SERV., IF10988, A BRIEF INTRODUCTION TO THE NATIONAL FLOOD INSURANCE PROGRAM 1 (2024).
[6] *See* DIANE HORN & BAIRD WEBEL, CONG. RSCH. SERV., R44593, INTRODUCTION TO THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) 1 (2024).
[7] *Id.* at 7.
[8] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., FISCAL YEAR 2023 FLOOD MITIGATION ASSISTANCE NOTICE OF FUNDING OPPORTUNITY 2-3 (2023).

order for NFIP to be sustainable, FEMA must (1) weigh the interests of cost concerns and affordability and (2) work together with state and local stakeholders.

II. OVERVIEW OF THE NATIONAL FLOOD INSURANCE PROGRAM

A. Role of the National Flood Insurance Program in the Housing Market

NFIP insurance coverage is available when states and municipalities participate in the program and agree to adopt "adequate land use and control measures" for flood risk mitigation.[9] For the communities that adopt such measures "consistent with the comprehensive criteria for land management and use,"[10] NFIP offers primary flood insurance through a variety of policies, known collectively as standard flood insurance policies ("SFIPs"), based on the type of dwelling residence.[11] While SFIP forms may differ to conform to the specific dwelling type, the qualification requirements and terms of coverage are generally consistent among the different insurance forms.[12]

Once a community opts into the program, homeowners residing in that community will generally be required to obtain flood insurance if they live in a flood-prone area.[13] Flood insurance is required if a person applies for a mortgage loan that is originated, guaranteed, or purchased in the secondary market by a federally regulated lending institution, federal agency lender, or a government-sponsored enterprise ("GSE") (collectively, "Federally Regulated Institutions").[14] Considering the federal government's footprint on the housing market, such a rule likely covers the majority of properties with mortgage loans in the United States.[15] By one estimate, around 77% of outstanding mortgage debt in impacted communities were subject to a flood insurance requirement in 2003.[16]

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[9] 42 U.S.C. § 4012(c).
[10] *Id.*
[11] *See* 44 C.F.R. § 61.3 (2020).
[12] *Cf. id.* at Part 61, Appendix A(1)–A(3).
[13] *See* 42 U.S.C. § 4012a(e).
[14] *See id.* § 4012a(b).
[15] The federal government can participate in the housing market directly, such as through the Government National Mortgage Association ("Ginnie Mae"), which is an entity under the Department of Housing and Urban Development, or indirectly through GSEs, including the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac"), which have been under government conservatorship as a result of the 2008 financial crisis. Fannie Mae and Freddie Mac historically have dominated the residential housing space and, together with Ginnie Mae, have "issued or guaranteed 95 percent or more of all MBS issued annually since 2008." U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-239, HOUSING FINANCE: PROLONGED CONSERVATORSHIPS OF FANNIE MAE AND FREDDIE MAC PROMPT NEED FOR REFORM intro. 1 (2019). Furthermore, GAO determined that "about 70 percent of single-family mortgage originations" were guaranteed by the federal government in 2017. *Id.*
[16] *See* Richard Tobin & Corinne Calfee, AM. INST. FOR RES., *The National Flood Insurance Program's Mandatory Purchase Requirement: Policies, Process, and Stakeholders* 31 (2005). *But see* Lloyd Dixon *et al*., RAND CORP., *The National Flood Insurance Program's Market Penetration Rate* 23 (2006) (finding that the coverage rate among homeowners required to carry flood insurance may have been as low as 43% in certain regions).

Homeowners can obtain primary insurance coverage through NFIP or another insurance provider.[17] In many cases, though, NFIP will be the only option available.[18] There are several reasons to account for this. For one, private insurers are disadvantaged structurally as they must compete with a government entity that is not subject to the same market constraints.[19] Such structural disparity substantially impedes the ability of a private insurer to undercut NFIP with a cheaper product. Second, flood insurance is considered a high-cost product whose risks are hard to forecast, making them unattractive to private insurers.[20] Where insurance companies have entered the residential flood insurance market, they have limited themselves historically to the high-end market where insurance companies can demand elevated premiums.[21] Third, regulatory uncertainty may impose a chilling effect on private insurers. If a homeowner opts for private insurance, the private insurance policy must be "at least as broad as the coverage provided under" an SFIP to be considered sufficient.[22] Insurance companies may be reluctant to offer their own products without further guidance on the meaning of "at least as broad as."[23] Fourth, private insurers may be subject to a non-compete clause and contractually prohibited from offering their own policies if they participate as servicing agents for NFIP.[24] Finally, policyholders themselves may be afraid of switching and risking losing discounts under their existing NFIP policies.[25]

Instead, insurance companies have embraced taking on a secondary role in marketing and servicing NFIP policies.[26] Insurance companies act as insurance brokers, also known as direct servicing agents, to sell and service policies under the NFIP Direct program.[27] Alternatively, insurance companies can issue NFIP policies "under their own names" through the Write-Your-Own program (the "WYO Program").[28] Under the WYO Program, private insurance companies are paid to write and service the policies directly in addition to acting as servicing agents.[29] However, under either arrangement, NFIP retains the financial risk of paying out claims as the formal underwriter of its policies.[30]

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[17] *See* DIANE HORN & BAIRD WEBEL, CONG. RSCH. SERV., R45242, PRIVATE FLOOD INSURANCE AND THE NATIONAL FLOOD INSURANCE PROGRAM 6 (2023).
[18] *See id.* at 10.
[19] *See id.* at 13 (maintaining that private insurers are at a disadvantage since they must consider "a profitable return on capital" that NFIP does not have to take into account).
[20] *See* DIANE HORN, CONG. RSCH. SERV., R45099, NATIONAL FLOOD INSURANCE PROGRAM: SELECTED ISSUES AND LEGISLATION IN THE 115TH CONGRESS 21–22 (2018).
[21] *See id.* at 22.
[22] 42 U.S.C. § 4012a(b)(7)(B).
[23] *See* HORN, *supra* note 20, at 23–24.
[24] *See* HORN & WEBEL, *supra* note 17, at 12.
[25] This is commonly referred to as the continuous coverage requirement (the "Continuous Coverage Requirement"). *See* 42 U.S.C. § 4014(g).
[26] *See* 42 U.S.C. § 4081(a).
[27] *See* U.S. DEP'T OF HOMELAND SEC., PRIVACY IMPACT ASSESSMENT FOR THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) DIRECT SERVICING AGENT (NFIP DIRECT) SYSTEM 2 (2017).
[28] *Id.*
[29] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., *The Write Your Own (WYO) Program* (2024).
[30] *See* HORN & WEBEL, *supra* note 17, at 6.

B. Flood Mapping and Pricing

SFIP premiums are priced based on the location, the relative elevation and other characteristics of the related property.[31] In order to evaluate the flood risk of a particular region, FEMA tracks information on flood-risk zones and categorizes different areas based on their vulnerability to flooding.[32] With this information, FEMA focuses on two types of floodplains, which it tracks through flood insurance rate maps ("FIRMs").[33] The first cohort consists of the 500-year floodplain.[34] A 500-year floodplain poses a moderate risk of flooding (calculated as 0.2% or greater annual chance of flooding).[35] While the risk to properties in such areas is acknowledged,[36] homeowners in properties located in 500-year floodplains are not required to obtain flood insurance although they may voluntarily do so.[37] The second cohort comprises the 100-year floodplain, or special flood hazard area ("SFHA"), which poses the highest risk of flooding for purposes of NFIP (calculated as 1.0% or greater annual chance of flooding).[38] In contrast to properties located in moderate-risk areas, homeowners of properties located in SFHAs are obligated to obtain an SFIP or private market alternative, if available.[39] The elevation of the property above the base flood elevation ("BFE") also factors into the pricing of SFIPs.[40] The BFE is the "elevation of surface water resulting" from a 100-year flood.[41] For purposes of pricing an SFIP, the elevation above the BFE is calculated as the difference in height between the ground elevation of the related property and the BFE of the affected area.[42] Finally, certain characteristics of the building are incorporated into the pricing formula.[43] For example, different prices may be assessed based on whether the occupancy type of the property is residential or nonresidential.[44]

Historically, FIRMs were not only used to identify flood zones but also to price NFIP policies although even then the wisdom of doing so was questioned.[45] A recurring concern was that FIRMs were not updated regularly, so they were not the most reliable sources for pricing premiums.[46]

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[31] *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-425, FLOOD INSURANCE: COMPREHENSIVE REFORM COULD IMPROVE SOLVENCY AND ENHANCE RESILIENCE 6 (2017).
[32] *See* 42 U.S.C. § 4101b(b)(1).
[33] *See id.* § 4101b(a).
[34] *See id.* § 4101b(b)(1)(A)(ii).
[35] *See id.* § 4004(a)(2).
[36] *See, e.g.*, Exec. Order No. 11,988, 24 C.F.R. § 55.1 (1978) (distinguishing the 500-year floodplains from the 100-year floodplains for flood management purposes).
[37] *See* HORN & WEBEL, *supra* note 17, at 3. A separate "lower-cost policy" used to be available for moderate-risk properties, but such policies were consolidated with SFIPs after Risk Rating 2.0. *See* HORN & WEBEL, *supra* note 6, at 12. For further information on these legacy policies, *see* DIANE HORN, CONG. RSCH. SERV., R44808, FEDERAL DISASTER ASSISTANCE: THE NATIONAL FLOOD INSURANCE PROGRAM AND OTHER FEDERAL DISASTER ASSISTANCE PROGRAMS AVAILABLE TO INDIVIDUALS AND HOUSEHOLDS AFTER A FLOOD 4 (2018).
[38] *See* 42 U.S.C. § 4004(a)(1).
[39] *See* 42 U.S.C. § 4012a(d)(1).
[40] *See* HORN & WEBEL, *supra* note 6, at 15.
[41] HORN, *supra* note 20, at 32 n.188.
[42] *See* HORN & WEBEL, *supra* note 6, at 6 n.36.
[43] *See id.* at 15–16.
[44] *See id.*
[45] *See* DOUGLAS ELMENDORF, CONG. BUDGET OFF., THE NATIONAL FLOOD INSURANCE PROGRAM: FACTORS AFFECTING ACTUARIAL SOUNDNESS 16 (2009) (noting that FEMA staff has raised the issue posed by "outdated maps" with respect to the "actuarial soundness of the flood insurance program" as early as 2007).
[46] The last update of each FIRM can be searched on FEMA's website. *See Community Status Book*, https://www.fema.gov/flood-insurance/work-with-nfip/community-status-book.

Even though FEMA is required to "assess the need to revise and update all floodplain areas and flood risk zones" every five years,[47] they are updated less frequently in reality.[48] Because FEMA does not have a uniform system of monitoring changes in topography, the pace of updates has varied with disparate results.[49] Most FIRMs are estimated to be between fifteen and twenty years old, with some last updated in the 1980s.[50] Since the implementation of Risk Rating 2.0, the use of flood zones for calculating premiums has discontinued although flood maps are still used for floodplain management purposes, namely in identifying flood zones.[51] However, there is evidence suggesting that the problems of using FIRMs for pricing purposes extend to identifying flood zones. Case in point, the inconsistency surrounding FIRMs could explain why a relatively high percentage of NFIP claims have originated from areas not originally designated as SFHAs.[52]

C. Mitigation Assistance Grant Programs

In addition to the flood insurance component, NFIP also includes the Flood Mitigation Assistance ("FMA") grant program to fund "mitigation activities designed to reduce the risk of flood damage."[53] The FMA is specific to the NFIP[54] and complements the broader Hazard Mitigation Assistance program, which FEMA administers for areas that have already been impacted "by a major disaster."[55] The FMA is funded through revenue collected by the NFIP as part of the mitigation assistance measures carried out by FEMA[56] and awards grants to communities participating in NFIP for various mitigation planning activities.[57] For 2023, the FMA program had $800 million available for grants.[58] In a study by the National Institute of Building Sciences, flood mitigation measures have been found to be effective – $11.5 billion in "federally funded flood mitigation" activities resulted in $82 billion in benefits, including $53 billion in potential property losses that were averted.[59]

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[47] 42 U.S.C. § 4101(e).
[48] *See* HORN & WEBEL, *supra* note 6, at 4.
[49] *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 31, at 4.
[50] *See* HORN & WEBEL, *supra* note 6, at 4.
[51] *See* DIANE HORN, CONG. RSCH. SERV., R45999, NATIONAL FLOOD INSURANCE PROGRAM: THE CURRENT RATING STRUCTURE AND RISK RATING 2.0 10 (2022).
[52] *See* HORN, *supra* note 20, at 44 (mentioning that "over 20% of NFIP claims are for properties outside SFHAs"). *See also* Samuel Oakford *et al.*, *America underwater*, WASH. POST (Dec. 6, 2023) ("FEMA officials have testified to Congress that over 40 percent of NFIP claims made in 2017 to 2019 were for properties outside official flood hazard zones, or in areas the agency had yet to map"), https://www.washingtonpost.com/climate-environment/interactive/2022/fema-flood-risk-maps-failures/?itid=lk_inline_manual_8.
[53] 44 C.F.R. § 77.1 (2021).
[54] *See* 42 U.S.C. § 4104c.
[55] 42 U.S.C. § 5170c.
[56] *See* 42 U.S.C. § 4104c.
[57] *See* 44 C.F.R. § 77.6 (2023).
[58] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., FISCAL YEAR 2023 FLOOD MITIGATION ASSISTANCE NOTICE OF FUNDING OPPORTUNITY 1 (2023).
[59] Multihazard Mitigation Council, Nat'l Inst. of Bldg. Sci., *Natural Hazard Mitigation Saves 2019 Report* 77 (2019).

D. Legislative Amendments

1. Biggert-Waters

NFIP has gone through several reauthorizations since the initial passage of the Flood Act.[60] Its last long-term reauthorization was part of a larger legislative package under the Biggert-Waters Flood Insurance Reform Act of 2012 ("Biggert-Waters") that intended to revamp the pricing framework of NFIP.[61] In addition to reauthorizing NFIP,[62] Biggert-Waters included a suite of changes that eliminated various legacy discounts in the program. Biggert-Waters mandated that rates be increased "to accurately reflect the current risk of flood."[63] As a general rule, the premiums of primary residences (and any other properties not subject to a higher rate of adjustment) would be increased annually by 20% so that any discount would be phased out "over a five-year period."[64] Such a rule had the effect of eliminating subsidies for primary residential properties that (1) were not considered to be in an SFHA at the time of construction[65] or (2) were considered to be in a less risky SFHA before being "remapped into a new flood rate class."[66] If a property gets mapped into a flood zone, the five-year timeframe would take effect upon the "issuance, revision, updating, or other change" in the relevant FIRM.[67]

The rate hikes of other property types were subject to an even more aggressive timeline. The rates of non-primary residential properties, severe repetitive loss ("SRL") properties,[68] business properties, and other properties that suffered substantial flood-related damage would increase by 25% annually until "the average risk premium rate for such properties" reached their full-risk rate.[69] Biggert-Waters also prohibited discounted premiums for (1) newly acquired properties, (2) properties without an existing NFIP policy, and (3) properties that had allowed their NFIP policies to lapse.[70] The applicable policyholders would lose their subsidies immediately, and their policies

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[60] *See* HORN & WEBEL, *supra* note 6, at 1. Since 2012, NFIP has been authorized through a series of short-term extensions. For a list of the statutory authorizations extending NFIP, *see* Table 6 under *id*. at 31–32.
[61] Biggert-Waters Flood Insurance Reform Act of 2012, Pub. L. No. 112-141, 126 Stat. 916 (2012) (codified at 42 U.S.C. §§ 4001–31) [hereinafter Biggert-Waters].
[62] *See* Biggert-Waters § 100203, 126 Stat. 916.
[63] Biggert-Waters § 100207, 126 Stat. 919.
[64] *Id*. The five-year phase-out period was repealed in its entirety under an amendment introduced by then-Representatives Michael Grimm and Bill Cassidy (the "Grimm-Cassidy Amendment"). *See, e.g.*, Ripon Advance News Service, *Cassidy introduces amendment to protect homeowners from spike in flood insurance rates*, THE RIPON ADVANCE (June 5, 2013), https://riponadvance.com/stories/510528691-cassidy-introduces-amendment-to-protect-homeowners-from-spike-in-flood-insurance-rates/; Representative Vern Buchanan, *Leadership was key to reform*, HOUMA TODAY (Apr. 24, 2014), https://www.houmatoday.com/story/news/2014/04/24/leadership-was-key-to-reform/27087375007/. The Grimm-Cassidy Amendment was adopted into the final version of the Homeowner Flood Insurance Affordability Act. *See infra* note 82.
[65] In precise terms, this subsidy applied to a property whose "construction or substantial improvement" preceded the later of the end of 1974 and "the effective date of the initial rate map." *See* 42 U.S.C. § 4015(c)(1).
[66] HORN, *supra* note 51, at 5.
[67] Biggert-Waters § 100207, 126 Stat. 919 (codified at 42 U.S.C. 4015(h)).
[68] *See* 42 U.S.C. § 4014(h) for definition. SRL properties are discussed further in the applicable section.
[69] Biggert-Waters § 100205(c)(3), 126 Stat. 918 (codified at 42 U.S.C. § 4015(e)(4)).
[70] *See id.* § 100205(a)(1)(B), 126 Stat. 917 (codified at 42 U.S.C. § 4014(g)).

would be subject to the full-risk rate.[71] The same treatment applied to policyholders who did not "accept any offer for mitigation assistance by the Administrator (including an offer to relocate)."[72]

In addition to repricing premiums, Biggert-Waters improved the flood mapping process. First, it reestablished and reauthorized the Technical Mapping Advisory Council ("TMAC") to provide recommendations on flood hazard, flood risk, and flood mapping.[73] TMAC was previously authorized in 1994, but it was subject to a sunset under the original statutory authority.[74] The revived TMAC under Biggert-Waters was established to be a permanent body.[75] Second, Biggert-Waters established the collaborative Risk Mapping, Assessment, and Planning ("Risk MAP") program.[76] The logic behind the Risk MAP program was to utilize the knowledge of local communities to update and to ensure the accuracy of FIRMs.[77] The widespread adoption of updated FIRMs would allow communities to "plan for development, improve its infrastructure, and decide how best to reduce its flood risk."[78] The revised FIRMs would also supplement the repricing component of Biggert-Waters. The five-year schedule for rate increases would be applied to properties predating FIRMs after they were mapped under a new or revised flood map.[79]

2. Homeowner Flood Insurance Affordability Act

The drastic measures adopted by Biggert-Waters were met with resistance from different stakeholders who were concerned about the "financial burden" such measures would impose.[80] In response, Congress passed the Homeowner Flood Insurance Affordability Act ("HFIAA") to mitigate some of the most severe aspects of Biggert-Waters.[81] Included in the final version of HFIAA was the Grimm-Cassidy Amendment, which repealed the five-year phaseout period that would apply to primary residences and other affected properties.[82] In its place was a gentler alternative under which premium increases for "properties within any single risk classification" were restricted to annual increases of 15% for primary residences[83] with the 25% annual increases under Biggert-Waters continuing for secondary homes, SRL properties and business properties.[84] On an individual basis, premium increases for primary residences could not increase by more than 18% per year.[85] While 18% may not seem like a dramatic reduction from 20%, it is worth clarifying

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[71] *See* Horn, *supra* note 20, at 7.
[72] Biggert-Waters § 100205(a)(1)(B), 126 Stat. 917 (codified at 42 U.S.C. § 4014(g)(2)).
[73] *See id.* § 100215, 126 Stat. 924 (codified at 42 U.S.C. § 4101a).
[74] *See Riegle Community Development and Regulatory Improvement Act of 1994*, Pub. L. No. 103-325, § 576(k), 108 Stat. 2160, 2281 (1994) (providing the termination of the original TMAC upon "5 years after the date on which all members of the Council have been appointed").
[75] Unlike *Riegle Community Development and Regulatory Improvement Act of 1994*, there is no express sunset provision in Biggert-Waters. *Cf.* Biggert-Waters § 100215, 126 Stat. 924–25 (codified at 42 U.S.C. § 4101a).
[76] Biggert-Waters § 100216, 126 Stat. 927 (codified at 42 U.S.C. § 4101b).
[77] FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., RISK MAP PHASE 4: MAP ADOPTION/SPOTLIGHT ON RESILIENCE 1 (2023).
[78] *Id.*
[79] *See supra* note 64.
[80] Nat'l Rsch. Council of the Nat'l Acad., *Affordability of National Flood Insurance Program Premiums: Report 1*–2 (2015).
[81] Pub. L. No. 113-89, 128 Stat. 1020 (2014) (codified at 42 U.S.C. § 4001 *et seq.*) [hereinafter HFIAA].
[82] *See* H.R. 3370, § 4, 113th Cong. (2013), which was adopted under HFIAA § 4(a), 128 Stat. 1022.
[83] *See id.* § 5, 128 Stat. 1022 (codified at 42 U.S.C. § 4015(e)(2)–(3)).
[84] *See id.*, 128 Stat. 1022-23 (codified at 42 U.S.C. § 4015(e)(4)).
[85] *See id.*, 128 Stat. 1022 (codified at 42 U.S.C. § 4015(e)(1)).

that the 18% limit serves as a ceiling and is restricted by the 15% risk-class limit. In contrast, the 20% increase under Biggert-Waters represented a fixed increment. For perspective, the average premium increases after the enactment of HFIAA were substantially below the statutory threshold, ranging between 6% and 12% annually.[86]

HFIAA also reversed the prohibitions to discounted premiums that applied to newly acquired properties and properties that did not have an existing NFIP policy.[87] In doing so, such properties would enjoy the newly enacted annual limits that applied to primary residences.[88] However, properties whose homeowners had allowed their NFIP policies to lapse or had refused earlier offers of assistance from FEMA continued to be ineligible for discounted premiums under HFIAA.[89] These homeowners would continue to be subject to the full-risk rate without a phaseout period.[90] In addition, properties that were subsequently mapped in an SFHA pursuant to an updated FIRM would be eligible for a discounted rate for the first twelve months followed by increases subject to the 18% annual limit.[91] To qualify, such "newly mapped" properties must (1) not have been determined to be in an SFHA prior to April 1, 2015 and (2) have had coverage for a full year after its mapping in an SFHA.[92]

3. **Risk Rating 2.0**

Beginning in October 1, 2021, FEMA implemented a new rating system known as Risk Rating 2.0.[93] The purpose was to modernize the pricing framework of NFIP insurance premiums to reflect a "property's specific flood risk."[94] In contrast to the legacy practice of pricing properties in the same flood risk zone at the same rates,[95] Risk Rating 2.0 incorporates FIRMs only to determine if such property is located in an SFHA.[96] As noted earlier, any property mapped in an SFHA must obtain flood insurance as a condition of obtaining a mortgage loan (such rule, commonly referred to as the "Mandatory Purchase Requirement").[97] Once a property is mapped into an SFHA, the underwriting process under Risk Rating 2.0 considers a "range of variables" specific to the property.[98] The rating system under Risk Rating 2.0 considers variables, such as physical characteristics of the building, elevation and distance to flooding sources, and replacement cost value of the building.[99] Risk Rating 2.0 also adds to the types of frequencies and sources of flood

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[86] *See* DIANE HORN, CONG. RSCH. SERV., IN11777, *National Flood Insurance Program Risk Rating 2.0: Frequently Asked Questions* 2 (2024).
[87] *See* HFIAA § 3(a)(1), 128 Stat. 1021.
[88] *See id.* § 5, 128 Stat. 1022 (codified at 42 U.S.C. § 4015(e)(3)).
[89] 42 U.S.C. § 4014(g).
[90] *See id.*
[91] *See id.* § 4015(i).
[92] *See* HORN, *supra* note 20, at 8.
[93] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., *NFIP's Pricing Approach* (2023).
[94] DIANE HORN, CONG. RSCH. SERV., R47000, *Options for Making the National Flood Insurance Program More Affordable* 7 (2023).
[95] *See* HORN, *supra* note 51, at 2. The effect of such model meant that properties located in areas with different topography would be assigned the same rate so long as they were located in the same flood zone and shared key structural aspects. See *id*. for further discussion on NFIP's legacy rating system.
[96] *See id.* at 10.
[97] *See* 42 U.S.C. § 4012a(b).
[98] *See* HORN, *supra* note 51, at 7.
[99] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., *Rate Explanation Guide* (2022).

risk.[100] In addition to the existing fluvial and coastal sources of flooding, pluvial flooding—flooding as a result of heavy rainfall—is included. Less common sources are also added, including tsunami-related flooding, flooding in the Great Lakes, and flooding in leveed areas.[101]

Risk Rating 2.0 may have its biggest impact on the prices of NFIP premiums. While phasing out NFIP subsidies did not begin with Risk Rating 2.0,[102] it clearly altered the pricing methodology from how it had been previously applied.[103] While annual increases under Risk Rating 2.0 cannot exceed the limits imposed by Biggert-Waters and HFIAA,[104] prices have increased at an accelerated pace under Risk Rating 2.0.[105] In a recent report, the Government Accountability Office ("GAO") gives the example that an insurance policy for a primary residence would be subject to the maximum 18% increase each year until its premium reached "the full risk of loss of the insured property," as determined by FEMA.[106] This is in sharp contrast to the 6%-to-12% range of annual increases that immediately followed HFIAA.[107] The average cost of insurance rose in every state after the implementation of Risk Rating 2.0,[108] and around 77% of policies saw an increase in their premiums overall.[109] For the State of Louisiana, around 80% of policies were hit with an increase as of 2021.[110]

III. ANALYSIS OF THE NATIONAL FLOOD INSURANCE PROGRAM

A. Affordability of the National Flood Insurance Program Premiums

This paper contends that raising rates too aggressively undermines NFIP's mandate to offer flood insurance "at reasonable rates so as to encourage prospective insureds to purchase such insurance."[111] While one might expect some tension between risk-adjusted and affordable premiums, FEMA's methodology seems to favor actuarial concerns at the expense of other considerations. But what good is a program that, in the process of becoming actuarially sound, ends up being too expensive for its intended beneficiaries?[112] By FEMA's own account, up to a million policyholders nationwide could lose their flood insurance coverage in the next decade due

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[100] *See* HORN, *supra* note 94, at 8.
[101] *See* HORN, *supra* note 51, at 7-8.
[102] *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-105977, FLOOD INSURANCE: FEMA'S NEW RATE-SETTING METHODOLOGY IMPROVES ACTUARIAL SOUNDNESS BUT HIGHLIGHTS NEED FOR BROADER PROGRAM REFORM 2 (2023).
[103] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., *Cost of Flood Insurance for Single-Family Homes under NFIP's Pricing Approach* (2024).
[104] *See* 42 U.S.C. § 4015(e).
[105] *See* HORN, *supra* note 94, at 8 (noting that, as a result of Risk Rating 2.0, 75% of premiums for primary residence policies would have seen increases greater than the statutory limit had they not been subject to such limit).
[106] U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 102, at 9.
[107] *See* HORN, *supra* note 86, at 2–3.
[108] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., *NFIP's Pricing Approach State Profiles* (2023).
[109] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., *Risk Rating 2.0 – National Rate Analysis*.
[110] *See* FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., *Louisiana — Risk Rating 2.0* (2021).
[111] 42 U.S.C. § 4015(b)(2).
[112] For context, around 450,000 policies were discontinued in the nine months after the implementation of Risk Rating 2.0. *See* Gianna Melillo, *Rising rates lead hundreds of thousands to drop FEMA flood insurance,* THE HILL (Aug. 22, 2022), https://thehill.com/changing-america/resilience/ natural-disasters/3610828-rising-rates-lead-hundreds-of-thousands-to-drop-fema-flood-insurance-report/.

to rising costs.[113] If NFIP is to be sustainable, its priorities must be realigned and give adequate attention to both affordability and actuarial concerns.

1. Disproportionate Impact on Certain Communities

The changes to NFIP have had a disproportionate impact along geographic, income, and racial lines. With respect to geographic allocation, properties in coastal states face the highest median percentage changes.[114] While the cost of a full-risk premium represents less than 2% of the median household income for most states, it exceeds that threshold for ten states.[115] The pace of premium increases raises affordability concerns for homeowners living in the affected areas.[116] The increased cost of flood insurance could make homeownership less affordable and at the same time hurt the property value and salability of properties in such areas.[117] As property values decline, local governments may also be impacted as a result of lower property tax revenue.[118] In a study conducted by Freddie Mac, the property values of coastal homes located in an SFHA were subject to a 4.3% discount compared to "an equivalent home" not in a coastal area.[119] Interestingly, such discount did not apply to other coastal properties outside of SFHAs.[120] In fact, coastal properties not in SFHAs sold at a 3.5% premium against the same control group, suggesting that the 4.3% discount is related to costs associated with flood insurance.[121] Louisiana is hit particularly hard where the average cost of flood insurance is about $700 more than the national average.[122] Among metropolitan areas, New Orleans is subject to the second-highest average insurance coverage, behind only Miami.[123] In 2023, NFIP premiums in the state reportedly increased by 234%, resulting in 52,000 Louisianians dropping their policies.[124]

As to the intersection of income and race, low-income and minority households are especially vulnerable to increased premiums. Compared to other cohorts, low-income households are more likely to live in SFHAs,[125] and their properties are more likely to suffer flood damage exceeding their home values.[126] Access to private flood insurance also may be more limited for such

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[113] *See* Michael Phillis, *FEMA report: Flood insurance hikes will drive 1M from market*, AP NEWS (Jul. 22, 2022), https://apnews.com/article/floods-entertainment-federal-emergency-management-agency-congress-climate-and-environment-2f8fac768c73e52090eaa59f742ff48d.
[114] *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 102, at 26-27.
[115] *See id.* at 30.
[116] *See id.*
[117] *See id.*
[118] *See id.*
[119] FREDDIE MAC, SEA LEVEL RISE AND IMPACT ON HOME PRICES IN COASTAL FLORIDA 6 (2022).
[120] *See id.*
[121] *See id.*
[122] *See* Molly Ryan, *Louisiana's insurance market is in crisis. New head says less regulation is the answer,* WWNO (Sep. 6, 2023), https://www.wwno.org/2023-09-06/louisianas-insurance-market-is-in-crisis-new-head-says-less-regulation-is-the-answer.
[123] *See* Chelsea Brasted, *Rates Climbing for Louisiana's insurer of last resort*, AXIOS NEW ORLEANS (Sep. 20, 2023), https://www.axios.com/local/new-orleans/2023/09/20/louisiana-flood-insurance-rates.
[124] *See id.*
[125] *See* TAMBALA STRATEGY, LLC, COAL. FOR SUSTAINABLE FLOOD INS., AN EVALUATION OF RISK RATING 2.0 IMPACTS ON NATIONAL FLOOD INSURANCE PROGRAM AFFORDABILITY 37 (2022) (noting that "household incomes tend to be higher in non-SFHAs").
[126] *See* Nat. Res. Def. Council, *Seeking Higher Ground: How to Break the Cycle of Repeated Flooding with Climate-Smart Flood Insurance Reforms* 3 (2017).

households, making them more dependent on NFIP for flood protection.[127] Even so, low-income households are more likely to be price sensitive to the cost of flood insurance despite living in areas most vulnerable to flooding.[128] In one study, low-income households comprised more than half of homeowners with properties located in SFHAs that did not have an NFIP policy.[129] Increases in premiums are also more likely to impact black households, partly because of their lower median household income.[130] Similarly, the full-risk premiums represent more than 3% of the household income of black homeowners, higher than the proportion of household income for other ethnic groups.[131] Black homeowners may also be less likely to obtain flood insurance according to the Congressional Budget Office.[132] For flood-prone communities where the majority of homeowners were black, 6% of such households were covered by NFIP policies, in contrast to 8% of white-majority communities in areas at risk of flooding.[133]

2. Continuous Coverage Requirement

The Continuous Coverage Requirement imposed by FEMA contributes to policies being less affordable as it discourages policyholders from exploring different options. Individuals who allow their flood policies to lapse risk the immediate loss of any subsidized rates to their old policies.[134] Because FEMA does not consider private flood insurance to qualify as continuous coverage, policyholders who switch from an NFIP policy to private insurance back to an NFIP policy would lose any discounts that they previously had been entitled to.[135] Presumably, such a rule would stifle competition and preclude the private market from acting as a potential check on increasing rates under NFIP.[136] Legislative proposals to address this inefficiency have been introduced but have stalled in both chambers of Congress.[137]

3. Mandatory Purchase Requirement

Under the Mandatory Purchase Requirement, a Federally Regulated Institution cannot make a mortgage loan for a property located in an SFHA unless it is accompanied by adequate flood insurance.[138] Although the Mandatory Purchase Requirement would likely cover the majority of mortgage loans, it would not include certain nonconforming mortgage loans offered by nonbank

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[127] *See* HORN, *supra* note 20, at 21-22.
[128] *See* TAMBALA STRATEGY, LLC, *supra* note 125, at 37 (finding that "income is a predictor of NFIP insurance with higher income households more likely to insure against flood risk than low-income households").
[129] *See id.* at 14.
[130] *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 102, at 32.
[131] *See id.* at 33.
[132] *See* FLOOD INSURANCE IN COMMUNITIES AT RISK OF FLOODING 7-12 (2024).
[133] *See id.* at 7.
[134] *See* 42 U.S.C. § 4014(g).
[135] *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-16-611, POTENTIAL BARRIERS CITED TO INCREASED USE OF PRIVATE INSURANCE 27 (2016).
[136] *See id*. at 31–32. If the Continuous Coverage Requirement were to allow private insurance, it is not certain to what extent private insurers would actually pose a challenge considering their limited engagement in the residential flood space. *See, e.g.,* HORN & WEBEL, *supra* note 17, at 10 ("Currently, the private flood insurance market most commonly provides commercial coverage, secondary coverage above the NFIP maximums, or coverage in the lender-placed market").
[137] *See* Flood Insurance Consumer Choice Act of 2023, S. 2110, 118th Cong. *See also* H.R. 900, 118th Cong. (2023).
[138] *See* 42 U.S.C. § 4012a(a) for minimum requirements of adequate flood insurance.

lenders.[139] Such loan products are typically less favorable to borrowers than conforming mortgage loans that would be subject to the Mandatory Purchase Requirement.[140] As discussed above, increasing costs of premiums may discourage homeowners, particularly those who are low-income, from buying flood insurance.[141] Due to the increasing unaffordability of flood insurance, low-income homeowners may be doubly harmed as they are pushed towards riskier mortgage loan products that do not require flood insurance.[142] Alternatively, homeowners might allow their polices to lapse due to rising costs or forgo obtaining flood insurance altogether.[143] For example, around 4,000 federally-insured mortgage loans were identified in an Office of Inspector General ("OIG") report as not having the required flood insurance at the time of origination.[144] Such actions may have severe repercussions as those individuals may be precluded in the future from obtaining federal disaster relief.[145]

4. Severe Repetitive Loss Properties

Defects in the management of SRL properties have also factored into higher costs for policyholders. SRL properties are those that have incurred (1) four or more claims exceeding $5,000 each with cumulative losses exceeding $20,000 or (2) at least two claims with cumulative losses exceeding the value of the related property.[146] SRL properties represent an important component of NFIP-covered properties.[147] According to FEMA, more than 30,000 SRL properties were covered by an NFIP policy.[148] On average, SRL properties have flooded every two or three years and have had to be rebuilt an average of five times.[149] SRL properties have also cost NFIP around $5.5 billion in the period between 1978 and 2015.[150]

Despite their substantial impact on the program, FEMA has neglected to maintain accurate records of SRL properties, according to a report by the OIG.[151] In conducting its review, the OIG discovered that certain SRL properties that had been improved upon were still labeled as being unmitigated, hurting homeowners who should have been eligible for lower premiums as a result

[139] *See* Tobin & Calfee, *supra* note 16, at 31.
[140] The terms "nonconforming mortgage" and "conforming mortgage" refer to whether such mortgage conforms to the purchase standards of GSEs. Such standards maintain uniformity and creditworthiness of the loans that are sold to GSEs in the secondary market. For further details on conforming mortgage loan standards, *see* N. ERIC WEISS & KATIE JONES, CONG. RSCH. SERV., R42995, *An Overview of the Housing Finance System in the United States* 5 (2017).
[141] *See* TAMBALA STRATEGY, LLC, *supra* note 125, at 37 (positing that low-income households may want "to insure against flood risk but lack an ability to pay").
[142] *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-578, CONGRESS SHOULD CONSIDER UPDATING THE MANDATORY PURCHASE REQUIREMENT 32 (2021) (suggesting that the 28% drop in flood coverage in 2019 may be explained partly by refinancings with private lenders).
[143] *See id.*
[144] *See id.* at 30.
[145] *See* HORN, *supra* note 94, at 9.
[146] *See* 42 U.S.C. § 4014(h).
[147] *See* Nat. Res. Def. Council, *supra* note 126, at 2 (finding that SRL properties represent 0.6% of properties under coverage but 9.6% of claimed damages).
[148] *See id.* at 10.
[149] *See id.* at 3.
[150] *See id.* at 2.
[151] JOSEPH CUFFARI, U.S. DEP'T OF HOMELAND SEC., *FEMA Is Not Effectively Administering a Program to Reduce or Eliminate Damage to Severe Repetitive Loss Properties* 6 (2020).

of such mitigation efforts.[152] The inaccurate records would also have had adverse effects on Congressional appropriation requests, mitigation project timelines, and grant program decisions.[153] The OIG also cited efficiency issues relating to the FMA application process and noted that it could be streamlined and made more equitable.[154] Such measures would improve the disappointing participation rate where roughly two-thirds of SRL properties that have lost coverage are unaccounted for.[155]

B. Issues Related to Risk Rating 2.0

The purpose of Risk Rating 2.0 was to fix certain shortcomings that FEMA considered outdated and unsustainable.[156] Regardless of its intentions, the final product may have done more harm than good. On the one hand, it refined the methodology by transitioning a pricing paradigm based on flood zones to one based individualized risk profiles.[157] On the other hand, it exacerbated affordability issues and frustrated policyholders along the way.[158] What's more, the manner of the rollout casts doubts on the legitimacy of Risk Rating 2.0, as discussed further below.

1. Statutory Authority

The absence of an express Congressional mandate raises a serious question of whether FEMA was actually authorized to implement Risk Rating 2.0. FEMA would argue that it has broad authority to set rates under the Flood Act[159] and that the rate hikes under Risk Rating 2.0 are within the statutory limits.[160] However, Risk Rating 2.0 is an overhaul of NFIP that goes far beyond setting premiums. An interpretation that the discretion to set rates is the same as the authority to revamp an entire program is a generous reading, to say the least. The question as to whether Risk Rating 2.0 was properly authorized becomes more compelling in light of the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* ("Loper Bright").[161] In the past, an agency's interpretation would have been entitled to deference so long as the interpretation was "based on a permissible construction of the statute."[162] However, this deferential standard of review was overturned under *Loper Bright*.[163] The Court reasoned that although an agency might have expertise on a specific subject matter, it has "no special competence" in parsing through statutory text.[164] On that basis, it does not make sense to delegate interpretive authority to those agencies.[165]

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[152] *See id.* at 8.
[153] *See id.* at 10.
[154] *See id.* at 11.
[155] Of the 15,389 SRL properties that were no longer insured by NFIP, around 4,665 were "purchased and demolished" and a further 1,126 were "elevated or flood proofed." This leaves 9,598 properties that would have "simply dropped coverage." *See* Nat. Res. Def. Council, *supra* note 126, at 2 n.21.
[156] *See* Interview by Dr. Carolyn Kousky with David Maurstad, Acting Assoc. Adm'r, Fed. Emergency Mgmt. Agency (May 23, 2022), https://esg.wharton.upenn.edu/news/conversations-about-risk-rating-2-0-part-i/.
[157] *See* HORN, *supra* note 51, at 10.
[158] *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 102, at 21–26.
[159] *See* 42 U.S.C. § 4015(a).
[160] *See generally* 42 U.S.C. § 4015(e).
[161] 144 S. Ct. 2244 (2024).
[162] *Chevron, U.S.A. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984).
[163] *See Loper Bright*, 144 S. Ct. 2244.
[164] *Id.* at 2266.
[165] See *id.* at 2267.

Even if parts of Risk Rating 2.0 could reasonably be statutorily supported, other portions seem to run contrary to the intent of Congress. The Flood Act was passed after a finding by Congress that there was a lack of affordable premiums being offered in the private insurance market.[166] It sought to remedy this by creating a flood insurance program that could absorb losses at a federal level and at the same time advance mitigation projects that would reduce the cost of flooding in the future.[167] The affordability of premiums was clearly a concern of Congress since the lack of which in the private market was one of the driving forces behind the enactment of the law. The Flood Act dispenses any lingering uncertainty by directing FEMA to consider both the actuarial flood risk and the affordability of premiums when determining rates.[168] FEMA, however, has not adequately fulfilled this dual mandate.

2. Lack of Transparency

FEMA has kept the actuarial analysis behind Risk Rating 2.0 close to its chest, leaving policyholders in the dark on how their policies are being calculated.[169] In a break with tradition, FEMA has declined to release analyses and other details that one might expect pursuant to the Administrative Procedure Act (the "APA").[170] Agencies are generally required under the APA to publish notices of all proposed rulemaking activities in the Federal Register to give the public a chance to comment and provide its own data and arguments relating to the proposed rules.[171] FEMA has so far refused to comply to the rulemaking procedures set under the APA.

The lack of transparency appears to be a recurring theme with respect to the rollout of Risk Rating 2.0. In mailings to policyholders leading up to its introduction, there was "only one minor reference to Risk Rating 2.0."[172] In addition, the fiscal report published by the Office of Flood Insurance Advocate (the "OFIA") mentions responses from homeowners who were confused about the recent changes in their policies.[173] It recommended that FEMA address the issue by making more information available to the public.[174] Other stakeholders, including local communities, levee districts, and developers, have requested but have been unsuccessful in obtaining actuarial information from FEMA.[175] Insurance agents have also argued that the lack of details given by FEMA hinders them from performing their jobs as they can neither explain to clients how different variables interact nor verify that the premium calculations are correct.[176] On top of that, policyholders have limited recourse to challenge their premiums after they are calculated.[177]

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[166] *See* 42 U.S.C. § 4001(b).
[167] *See id.* § 4001.
[168] *See id.* § 4015(b)(1)-(2).
[169] *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 102, at 60.
[170] 5 U.S.C. § 551 *et seq*.
[171] *See id.* at 553(b)-(c).
[172] *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 102, at 60.
[173] OFF. OF THE FLOOD INS. ADVOCATE, FED. EMERGENCY MGMT. AGENCY, U.S. DEP'T OF HOMELAND SEC., *OFIA Fiscal Year 2022 Annual Report: Insights and Recommendations* 2, 8 (2024).
[174] *See id.* at 7.
[175] *See* Maurstad, *supra* note 156.
[176] *See* U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 102, at 61–62.
[177] *See* HORN, *supra* note 86, at 3.

Transparency issues also hinder the construction of mitigation efforts as policyholders lack guidance on how different measures reduce premiums.[178] Before Risk Rating 2.0, insurance tables could readily be translated to determine the most effective mitigation projects, which prompted stakeholders to "devise solutions to reduce flood insurance cost and flood risk."[179] However, policyholders are less incentivized to take on new mitigation projects if they are unsure how they will lower premiums or if they will do so at all.[180] The OFIA reached the same conclusion in its report—the lack of clarity prevents homeowners from knowing how "to reduce their flood risk" and local officials from deciding on the best "mitigation funding opportunities."[181]

IV. CONCLUSION

For over fifty years, NFIP has stepped in to provide flood insurance in communities where protection from flood risk may not have been available otherwise. Increasingly concerned with the program's solvency, FEMA has focused its attention on phasing out discounts and raising rates.[182] Such measures, though, have come at the cost of pushing out policyholders who may have no other options.[183] It is not just that insurance policies have become more expensive, but they have become more expensive much more quickly. To add insult to injury, these changes were implemented with minimal communication and transparency, which has understandably made the experience all the more frustrating for policyholders.

Things have deteriorated to such an extent that ten states and multiple municipalities have filed a lawsuit seeking to enjoin the implementation of Risk Rating 2.0.[184] Such litigation is costly and inconsistent with the intent of Congress—Congress designed NFIP as a way for FEMA to work with state and local governments in mapping flood zones and planning mitigation projects.[185] In contrast, litigation diverts attention from the communities whom Congress intended to help. If FEMA wishes to repair its relationship with stakeholders, it should consider the following steps: (1) balancing affordability considerations with other concerns in its methodology, (2) sharing Risk Rating 2.0's actuarial information for greater transparency, and (3) reevaluating and reintroducing Risk Rating 2.0 under the rulemaking procedures set by the APA. While not a panacea, such steps would ease the misgivings that have developed after the introduction of Risk Rating 2.0 and would help rebuild the working relationship needed for NFIP to succeed.

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[178] *See* Chad Berginnis, *Risk Rating 2.0: Adjustments Needed,* ASS'N OF STATE FLOODPLAIN MANAGERS (Jun. 15, 2023), https://www.floods.org/news-views/from-the-directors-desk/risk-rating-2-0-adjustments-needed/.
[179] *Id.*
[180] *See id.*
[181] *See* OFF. OF THE FLOOD INS. ADVOCATE, *supra* note 173, at 6.
[182] *See* HORN, *supra* note 94, at 6.
[183] *See, e.g.,* PHILLIS, *supra* note 113.
[184] *See* Complaint, State of Louisiana, et. al. v. Mayorkas, Case No. 2:23-cv-01839 (E.D. La. 2023).
[185] *See* 42 U.S.C. § 4024.

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