

NLWJC- Kagan

Counsel - Box 006 - Folder 013

Disaster insurance

Jeff Powell 4-13-96
Several issues - AC.

A. Can't sit up.

1) kinds of things it does - exercise right with

'Officers' -

Appointments Cl.

inferior?? has to be to be court.

maybe survive; maybe not

binding or caps here - affecting P in priv order

final decision maker.

messy as to litigation prospects.

Options 1. make recommended? (then has final decision)

2. or - subj to judicial review.

3. or - make emblem by h/a/agt by pres

B. List of qualifications

AC is re imposing such quality?

difficult to resolve

test - AG opin - lean applying auto w/ on this range of choices.

problems with choice - OK

C. Dir as "representatives"

not a court issue really

just use diff word.

NO IOA. Issues - NOT directing or activ.

No -
common
claim.

Need privi → & shall be construed to waive sov.
immunity of US.

check on FTCA.

Ellen - Fridman 4-5-96

Earthquake

Draft bill - industry
piece establishing
loss costs cap'n

all so +
with int
rates

ins pricing
base = loss costs - estimate of
actual payouts in event
thing happens
+ admin costs
+ profits
etc.

rates for most cons. lines - regulated by state
Theoretical prob - Diffic of actuarial pricing
earthquake damage
unusual bc
rare events, but
generate huge losses,
correlated w/in reg area
also: likelihood tiny??

→ Who knows rt price?

diffic to deal w/
actuarially - hard to
do actuarial pricing

Other probs -

1) undercharging - recently

2) many states - ins consumer elected -
shopping stone to govern.

Rates! (more imp than long-term solvency)

Situation - rates for lots of reasons - too low in
hi risk areas. Ins cos, in response, are pulling out -
availability crisis.

St Farm, Allstate, Aetna - too large share of coverage in hi
risk areas

We've come up w/ something (derivatives)
ind. is interested

They're proposing
LCC -

11 memos - applied by fecy of T
6 scientists

reqs of various sps.

req'd to ~~have~~ come up w/ transparent LC model -
by zip code - likelihood x level of loss

Then -

1) each co would fit its business - if it wanted to
come up w/ LC estimate - non-ve but grouping
part of filing w/ st com'ers

2) other use - by
Treasury - in pricing derivatives

3 legal issues

1. What is This? Under say of Treas
Advisory?

Power / Responsibility ~~for~~ - DOT harden it?
Not indep agency

what does this imply?
↓

2. Support by disaster -
claims that fed gov't not + L
wrong.

What's liab of fed gov't?

St commissioner
has to accept? ←
LOA prob.

3) Are there any limits on fed
involvement in this area

Next Thursday -

discussion w/ industry, commissioners
Stevens will try to get us to take POC.

Need to know what issues are

Ellen Sidman

Earthquake Ins.

lost cost cum'n

11-person

app. by Treasury

adv's bd.

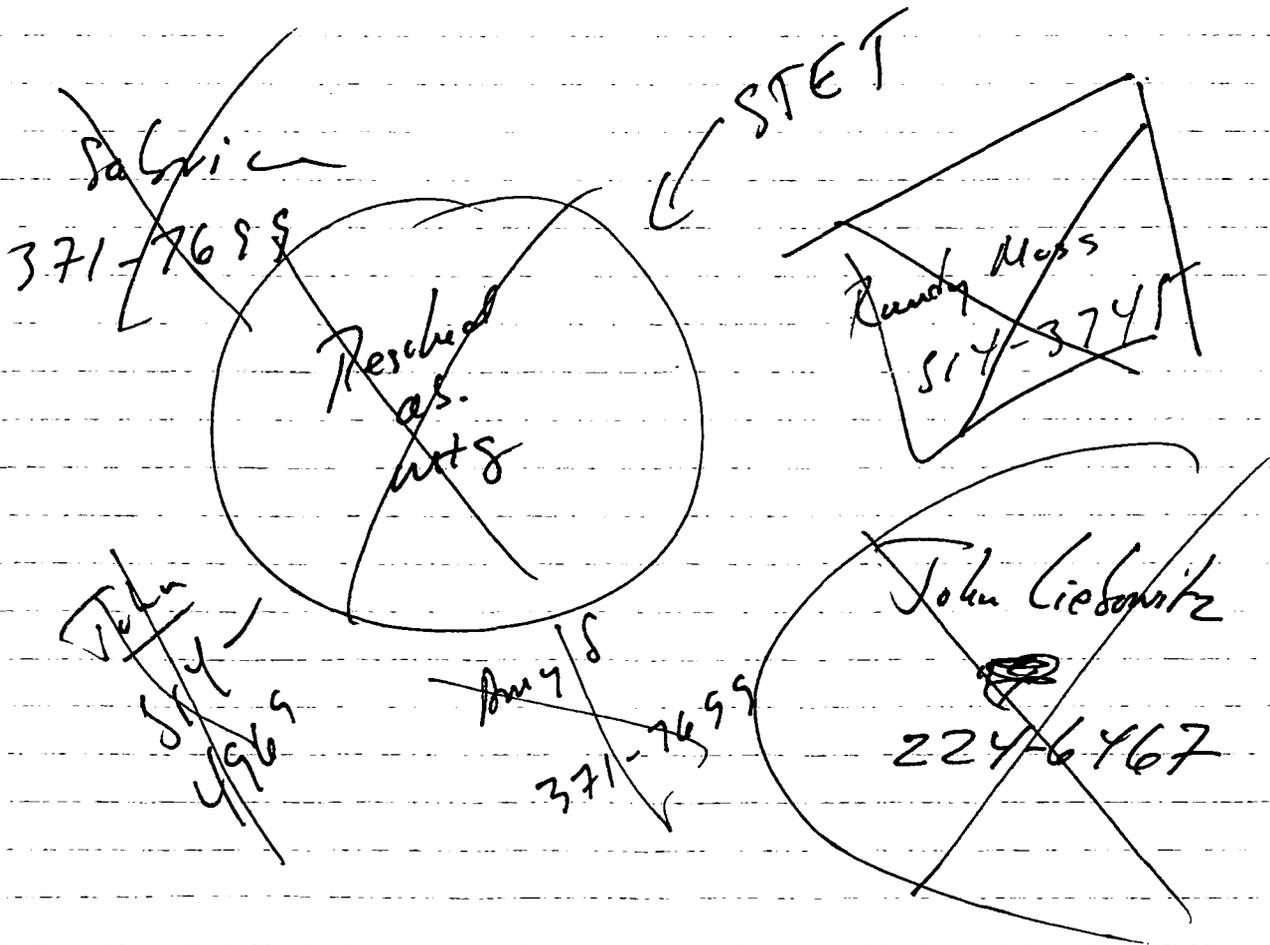
Issue re rel to Treasury

potential liab or crs

also cust g's.

Proposed language from industries

April 11 - Stevens wants to talk abt it



See p 13

Section-by-Section Analysis of the Natural Disaster Protection and Insurance Act of 1995

S. 1043

~~(Introduced by Senator Stevens)~~

New summary as proposed March 14, 1996
*(provisions which have been removed are printed in italic strikethrough-
new provisions are printed in bold italic)*

This legislation amends the Earthquake Hazards Reduction Act of 1977 to provide for an expanded program of hazard mitigation and private insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions.

Section 1. TITLE. This section entitles the bill the "*Natural Disaster Protection and Insurance Act of 1995.*"

Section 2. FINDING. This section adds 11 new congressional findings to the Earthquake Hazard Reduction Act ("EHRA") that outline the policy rationale. The findings, for instance, state that: the major natural disasters (e.g., hurricanes, earthquakes and volcanic eruptions) will inflict substantial long-term consequences on the country; hazard reduction measures, such as building codes, are not in place or not adequately enforced; improved first responder and emergency management capabilities will lessen the impact of future disasters; and millions of Americans do not have adequate natural disaster insurance coverage.

Section 3. PURPOSE. This section adds 10 new purposes to the EHRA that explain the objectives of the legislation. The purposes, for instance, include: building safer structures that can better withstand natural disasters; enhancing emergency management and first response capability; creating a self-sustaining funding mechanism to help states pay for hazard mitigation programs; providing adequate private insurance coverage for natural disaster perils; involving the insurance industry to speed recovery following a catastrophic disaster; ~~and reducing reliance on government disaster assistance by creating a Natural Disaster Protection Fund.~~

Section 4. DEFINITIONS. This section defines ~~26~~ new terms to the EHRA.

Section 5. CONFORMING AMENDMENTS. This section makes several conforming changes to the EHRA, primarily renumbering section numbers.

Section 6. MULTHAZARD MITIGATION PROGRAM. This section adds a new title II with two subtitles to the EHRA that creates a comprehensive multihazard mitigation program.

~~**SUBTITLE A FEDERAL EMERGENCY MANAGEMENT AGENCY**~~

~~This subtitle contains four hazard mitigation sections that will be coordinated by the Director of the Federal Emergency Management Agency ("FEMA").~~

~~**Section 201. Support Programs.** This section requires the FEMA Director to establish and carry out natural disaster mitigation programs for the following purposes: (a) to undertake research to strengthen building codes and promote development of cost-effective building technologies and other related hazard mitigation measures; (b) to develop hazard mitigation technology for states, local communities, and other persons (e.g., building contractors) responsible for implementation and enforcement of hazard mitigation measures; and (c) to undertake educational programs to enhance public awareness of the risks and hazards associated with natural disasters and ways to mitigate losses from such disasters.~~

~~**Section 202. New Federal Building Standards.** This section codifies into statute Executive Order 12699 (55 Fed. Reg. 835) which relates to seismic safety of federal and federally assisted or regulated new building construction.~~

~~**Section 203. National Minimum Consensus Building Construction Standards.** This section requires FEMA to enter into an arrangement with the National Academy of Sciences ("NAS") to conduct a study of the advisability and feasibility of establishing national minimum consensus building construction standards addressing natural disaster mitigation issues through private sector standards developing organizations. The study will be performed by a NAS-appointed panel of experts, including builders, realtors, insurers, members of organized labor, and building code officials from the model building code congresses. The study will be limited to natural disaster issues, and the NAS will transmit to Congress a report within two years of enactment containing the results.~~

~~**Section 204. Designation of Natural Disaster-prone States.** This section requires FEMA to promulgate within six months of enactment which states are exposed to the natural disaster perils of earthquake, volcanic eruption, tsunami, windstorm, or hurricane. These states will be classified as "natural disaster-prone." The determination for the seismic perils will be based solely on data provided by the United States Geological Survey ("USGS") and the determination for windstorm and hurricane perils will be based solely on data provided by the National Oceanic and Atmospheric Administration ("NOAA").~~

SUBTITLE A - LIMITS ON FEDERAL DISASTER ASSISTANCE. This section amends the Stafford Act in two respects to make the provision of federal disaster assistance more equitable.

Federal aid for states will be available only after the state had paid, or agreed to pay, at least \$5 per each state resident for repair and reconstruction of *public facilities buildings owned by state or local governments* damaged by a natural disaster. Second, the federal share of disaster aid for repair and reconstruction of public facilities will be set at 75% and a higher federal share can only be obtained through the enactment of separate legislation that must be on budget and paid for (unless budget points of order are expressly waived under Gramm-Rudman).

As included in the Clinton Administration's White Paper on Disaster Insurance and Mitigation, an income limit of \$100,000 would be placed on the FEMA individual/family grant program, and temporary housing assistance following a disaster would be limited to 12 months.

The interest rate on the Small Business Administration (SBA) disaster loan program would be increased to the Treasury rate ~~plus 200 basis points~~, thus limiting the subsidy associated with the program.

Insurance Requirement for Federal Disaster Relief. Individuals who experience natural disasters who choose not to purchase private hazard insurance against those perils or who did not have flood insurance coverage (provided they are required to do under the National Flood Insurance Act) will be ineligible for long-term federal disaster relief. Homeowners whose annual household income exceed ~~\$60,000~~ \$40,000 will be ineligible to receive Stafford Act individual or family assistance grants or similar federal disaster aid. Disaster assistance from SBA or similar federal agencies will also be denied to business owners if the business property is not insured. Federal aid will not be cut off if homeowners or businesses can reasonably demonstrate that adequate insurance was not available in the private market.

SUBTITLE B - DISASTER MITIGATION

This subtitle adds ~~six~~ seven sections which are aimed at improving the ability of states and local communities to implement hazard mitigation measures and prepare for and respond to natural disasters.

Section 801. Adoption of Building and Safety Codes. This section requires *each natural-disaster-prone* states to either adopt a building code that meets the natural disaster mitigation portions of one of the *three* referenced model building codes (including the National Fire Protection Association safety codes) or *certify that the states' local communities have adopted and are enforcing these codes provide the federal government*

with a listing of local communities which have not adopted codes on their own. Likewise, the law will reassert that ~~states or~~ communities identified as flood-prone under the National Flood Insurance Program ("NFIP") must adopt the flood minimum performance standards mandated under the NFIP *provide the federal government with a listing of local communities which have not adopted these standards on their own or certify that its flood-prone local communities have adopted and are enforcing such standards.* Those communities identified listed would be required to adopt these standards. The building and safety codes, as well as the minimum performance flood standards, required by this section will apply to new and substantially modified residential and commercial construction.

Section 802. Development of State Mitigation Plans. This section requires each ~~natural disaster-prone~~ state to develop a plan, or designate an existing plan, for improving the state's ability to reduce the hazards of natural disasters. At a minimum, the mitigation plan will include processes for: (1) ensuring compliance with building codes; (2) improving emergency response; (3) training of first responders; (4) enforcing local land use and management ordinances; (5) addressing the impact of further development in high-risk areas on the environment; (6) ~~ensuring all builders, plumbers, electricians, and building inspectors are licensed or certified;~~ and (7) identifying critical facilities and lifelines and public structures to be *cost-effectively* retrofitted within a fixed time period.

Section 803. Time Periods for Compliance. This section gives states approximately between two and five years to comply with the building codes and mitigation plan requirements of sections 801 and 802. The compliance process consists of a series of milestones. Within two years of the ~~enactment~~ *issuance of regulations*, states must have developed the mitigation plan and submitted it to FEMA for review. Within three years of enactment, states must have adopted the building and safety codes *or, alternatively, identified local communities which have not adopted them.* Within ~~four years of enactment~~ *two years of FEMA approving the mitigation plan*, states must certify that the ~~six~~ *seven* processes of the mitigation plan are being implemented. And finally, within ~~five years of enactment~~ *four years of issuance of regulations*, states must certify that the building and safety codes are being adequately enforced. This section also requires FEMA to promptly notify in writing those states which fail to meet any of the compliance milestones described above so that the state may take corrective action. If after receiving the notification, the state does not take corrective action within 180 days, the state will receive a reduced share of financial assistance as provided in section 804 until such date as the Director determines that the state has taken the necessary corrective action. Finally, FEMA will issue regulations guiding the states as to what constitutes adequate compliance.

Section 804. Federal Share of Financial Assistance. This section imposes two penalties on states *or communities* that do not meet with the compliance milestones within the prescribed time periods described in section 803 (including the official notification and opportunity to cure). First, the state's *or community's* minimum Stafford Act cost share for

federal disaster aid will be reduced from 75% to 50%. Second, monies from the new Mitigation Account provided under section 805 will be denied to that non-compliant state or community.

Section 805. Mitigation Trust Fund. This section allocates monies appropriated to a Mitigation Trust Fund ~~described in section 1004~~ to each state annually through a pro rata formula, ~~issued by FEMA, of the premiums collected in that state based on disaster exposure data provided by the Catastrophe Loss Cost Commission.~~ These funds could be used by the states only for hazard mitigation measures, such as assistance for: first responders; state revolving loan funds to leverage funding for mitigation activities; low-income individuals and families to help pay for hazard mitigation measures; natural disaster damage prevention and mitigation technology centers; addressing the impact of further development in high-risk areas on the environment; and *pre-disaster mitigation such as cost effective retrofitting of public facilities-construction of buildings to serve as models for cost effective mitigation.* Priority in allocation of funds will be given to the building code and mitigation plan requirements described in sections 801 and 802. FEMA will be authorized to review and audit state programs. ~~Every state will also qualify for a minimum annual amount of mitigation funds, i.e., the greater of \$250,000 or 0.25 percent of the entire fund.~~ Finally, states will also be required to transfer at least 25% of the money to local communities.

Section 806. No Unfunded Mandates. This section prohibits the imposition of any new mitigation requirement by this Act on a state that is not fully funded. If a state documents to FEMA that the state has not received adequate funds from the Mitigation Account to fully cover the cost of a particular mitigation requirement (e.g., building codes or mitigation plan preparations), that particular mitigation requirement will not apply to the state. This "no unfunded mandates" provision will not apply to non-compliance states that have been denied funds from the Mitigation Account or to any duty imposed by this Act that is a condition of any federal assistance provided by the Stafford Act.

Section 807. Studies. This section requires FEMA to enter into an arrangement with the National Academy of Sciences ("NAS") to conduct three studies.

~~*National Minimum Consensus Building Standards. The first study will assess the advisability and feasibility of establishing national minimum consensus building construction standards addressing natural disaster mitigation issues through private sector standards developing organizations. The study will be performed by a NAS appointed panel of experts, including builders, realtors, insurers, members of organized labor, and building code officials from the model building code congresses. The study will be limited to natural disaster issues, and the NAS will transmit to Congress a report within two years of enactment containing the results.*~~

~~*Residential Disaster Inspections. The second study will assess the advisability and feasibility of establishing standards for the training and licensing of home inspectors and using home inspectors as a means to promote mitigation of residential structures. The study will be performed by a NAS-appointed panel of experts, including building constructors, lending institutions, local community officials, private insurers, homeowners, and organized labor. NAS will transmit to Congress a report within two years of enactment containing the results and any recommendations.*~~

~~*Maintenance of Critical Facilities. This study will establish the development of guidelines for the maintenance of operation of critical facilities such as hospitals, schools and other public facilities in the aftermath of disasters.*~~

~~*Dissemination of Disaster Research. This study will examine ways to facilitate the broad dissemination of disaster mitigation research on a continuing basis to state and local governments, the insurance industry, and other interested parties. The study will also examine the efficacy of federal research into wind risk.*~~

Section 7. NATURAL DISASTER INSURANCE. The sections of this legislation dealing with the creation and operation of the Natural Disaster Insurance Corporation have been stricken. The new bill contemplates that the NDIC will be created by and for the private insurance industry to offer reinsurance only (no primary coverage for individuals) with no federal assistance or backstop. It may be determined at a later date that referencing the proposed corporation in a brief section is appropriate in order to confer some sort of anti-trust protection or special tax-status.

Federal disaster insurance will be provided in the form of catastrophic reinsurance contracts which will be auctioned by the Treasury to insurers, reinsurers and state insurance programs. The Clinton Administration is drafting language on this proposal.

~~*This title contains three subtitles that create a private corporation to issue primary insurance coverages and provide reinsurance for natural disaster perils.*~~

~~SUBTITLE A NATURAL DISASTER INSURANCE CORPORATION~~

~~*This subtitle adds eight sections that detail the creation and operation of the private Natural Disaster Insurance Corporation.*~~

~~*Section 301. Organizational Structure. This section establishes, as a condition of receiving federal loans, a private (non-governmental), not for profit membership corporation to know as the Natural Disaster Insurance Corporation (the "Corporation").*~~

~~Membership. The Corporation's members will own shares in the Corporation and will consist of two entities: (1) private insurers (defined as private insurers and reinsurers, and their related affiliates, which are licensed or admitted to write property and casualty insurance or reinsurance within a state) that participate as service providers for the primary insurance coverages or purchase the reinsurance; and (2) state insurance pools (defined as only those state-sanctioned entities which provide property insurance against natural disaster perils and meet minimum actuarial and underwriting standards as established by the Corporation) that purchase the reinsurance. Individual members of the Corporation will not be liable for the obligations of the Corporation.~~

~~Start-up. A start-up administrator selected at the initial organization meeting of the Corporation will coordinate early activities of the Corporation, including the collection of start-up loans, until the Board of Directors has been formally selected. Start-up costs of the Corporation will be derived from loans received from its participating insurance members. The loans would be in proportion to that insurer's premium volume written countrywide. All loans would be repaid with interest within 36 months from future premiums received.~~

~~Board of Directors. The Corporation will be governed by a 15-member Board of Directors to be elected by members of the Corporation. Nine of the Directors will represent an equitable cross section of the private insurance members of the Corporation. Three of the nine insurance Directors will represent the following special classes: reinsurers; small direct insurers that operate in less than ten states; and commercial insurers that write nationwide. Three of the insurance Directors will be elected based upon premium volume and the remaining three will be elected at large. Six Directors will be non-insurers and will represent the following interests: insurance agents or brokers; state insurance regulators; risk assessment experts from the National Academy of Sciences; consumers; and banking and real estate industries. All Directors will serve staggered six-year terms.~~

~~Powers of the Corporation. Upon election of the nine insurance Directors, the Corporation will be empowered to take all necessary and appropriate actions to carry out the primary and reinsurance coverages, manage the trust accounts, and raise funds in the private capital market. The Corporation cannot exercise any governmental powers or hire any federal employees. No action undertaken by the Corporation under the terms of this legislation could result in liability under any federal or state law.~~

~~Section 302. Plan of Operation. This section requires the Board to develop a plan of operation which will set forth the specific programmatic operations for the~~

~~Corporation and for the primary and reinsurance coverages. The plan of operation will protect any proprietary information provided by insurers and will be designed to encourage stability with respect to insurer participation in the Corporation. The plan will include, at a minimum, the following details for the insurance coverages: the rates (defined as gross rates with all expenses of the Corporation and the companies included); the terms and conditions of the coverages provided, including coverage eligibility requirements, coverage limits, deductibles, quota share amounts for the primary coverages, and retention points for the reinsurance; the specific forms and policy contracts; the criteria for the settlement of insurance claims; the minimum financial viability standards necessary for entities to be eligible to purchase the reinsurance; any commercial lines of insurance (beyond the nine specific lines included in the definition of commercial losses) that will be eligible for reinsurance coverage; and grievance procedures for resolving disputes among members of the Corporation.~~

~~Section 303. Pricing. This section requires the Board of the Corporation to develop, and adjust when necessary, the rates for the primary and reinsurance coverages. The rates will be based on historical aggregate losses supplemented by natural disaster modeling. The rates will be actuarially sound by minimizing cross-subsidization between geographic risk territories and will produce expected premiums sufficient to pay for all claims and costs of the Corporation and the insurance coverages. The rates will be approved by the Natural Disaster Insurance Board of Actuaries described in the next section.~~

~~Section 304. Independent Board of Actuaries. This section establishes a five-member independent Natural Disaster Insurance Board of Actuaries to review and approve the plan of operation and the rates developed by the Corporation. The five members will be appointed by the Secretary of the Treasury within six months of enactment and will serve staggered six-year terms. Members appointed must not be employees of Corporation members and must be professional actuaries who have experience in setting actuarially sound property and casualty rates.~~

~~Plan of Operation. The Independent Board of Actuaries will review a draft of the plan of operation (and amendments to it) within 15 months of enactment. The plan will be deemed approved unless within 90 days the Independent Board disapproves it by finding that the plan, as a whole, is materially inconsistent with the Act. A plan disapproved will be returned to the Corporation with written instructions of required changes.~~

~~Rates. The Independent Board of Actuaries will review proposed rates and rating methodologies (or rate adjustments) within 12 months of enactment. The rates and methodologies will be deemed approved unless within 90 days the Independent~~

~~Board disapproves them because compelling and substantial actuarial evidence is presented on the record showing that the rates or methodologies are materially inconsistent with the actuarial soundness requirement of section 903. Rates or methodologies disapproved must be submitted back to the Corporation with instructions for how to make them actuarially sound. As part of its review and approval of the rates, the Independent Board must consult USGS, NOAA, and NIS to ensure the accuracy of natural disaster risk models as part of its review and approval of the rates.~~

~~Section 305. Participation of State Insurance Regulators. This section requires the Corporation to file information copies of the rates and the insurance forms for the policies issued by the Corporation with the state insurance departments. The Corporation's rates and forms, however, will not be subject to approval of state insurance regulators. But state approval will be required if insurers wish to charge a different rate for the primary coverages than set by the Corporation. This rate deviation, however, could only apply to that portion of the rate that compensates the insurer for its costs, including administrative expenses, agent commissions, and taxes. Inquires and complaints regarding claims settlement practices, including those directed at state insurance regulators, will be handled by the Corporation. States can assess premium taxes on the Corporation's coverage, but cannot charge a tax rate greater than the premium taxes assessed for the underlying homeowner's coverage. The Corporation could also not be a member of state guaranty funds, and policyholders of the Corporation's coverages could not bring claims against any state guaranty fund. Finally, this section preempts any state mandates requiring the purchase of natural disaster insurance in amounts greater than those required by this Act.~~

~~Section 306. Trust Accounts. This section establishes two trusts accounts: (1) a primary account that will consist of premiums collected by private insurers acting as service providers of the primary coverages described in subtitle B; and (2) a reinsurance account that will consist of premiums collected from insurers purchasing the reinsurance coverage described in subtitle C. Claims will be paid from the respective accounts. The Corporation will manage both accounts and invest funds as the Board sees appropriate. Co-mingling funds in the accounts or borrowing between accounts will be prohibited. In the event amounts in the trust accounts or funds raised in the private market are insufficient to pay claims and expenses, federal loans from the U.S. Treasury will cover the difference from amounts in the Private Loss Account described in section 1002. The federal loans will be non-subsidized, subject to appropriations, and cannot exceed the capacity of the Corporation to repay within 20 years. The federal loans will be repaid, with interest, from future premiums, as appropriate, from the primary and reinsurance coverages. Until loans to the primary account are repaid, each participating private insurer must either continue to operate as a service provider or can withdraw under conditions of withdrawal set by the Corporation. Until loans to the reinsurance account are repaid, private insurers and state insurance pools purchasing the reinsurance must either continue to purchase the~~

~~reinsurance or fully repay their share of the federal loan.~~

~~Section 307. No Federal Funds. This section mandates that no federal funds shall ever be provided to fund any activities of the Corporation (except for the federal loans that are to be repaid with interest).~~

~~Section 308. GAO Audit. This section requires GAO to annually audit activities of the Corporation and the Independent Board of Actuaries to ensure that both entities are complying with this Act.~~

~~SUBTITLE B - PRIMARY INSURANCE COVERAGES~~

~~This subtitle adds five sections that detail the operation of the primary insurance coverages issued by the Corporation.~~

~~Section 311. Scope of Coverage. This section authorizes the Corporation to issue primary natural disaster insurance coverages for residential property structures (defined as one to four family dwellings). The coverage will include debris removal, additional living expense, and ordinance and law coverage. The natural disaster perils covered by the primary coverages will include: earthquake shake damage (no fire following); volcanic eruption, including fire; tsunami; and hurricane (defined to include those officially declared hurricanes and associated windstorm events occurring within 168 hours before and after making landfall).~~

~~Section 312. Provision of Coverage. This section specifies that the primary coverage policy will be a supplemental contract of insurance provided in conjunction with the standard homeowners' policy. All private insurers will be eligible to serve as providers of the primary coverage offered by the Corporation. All private insurers participating will be required to offer the seismic coverages (earthquake, volcanic eruption, and tsunami) and will have the option to offer the hurricane coverage. Insurers participating must offer the Corporation's seismic policy to all of its residential policyholders in earthquake-prone states wishing to purchase such coverage. Private insurers also choosing to offer the hurricane policy must offer it to all of its residential policyholders in hurricane-prone states.~~

~~Section 313. Insurance Purchase Requirement. This section requires owners of residential properties in natural disaster-prone states that are backed with new federally-related mortgages to purchase the primary insurance coverages or equivalent coverage provided by a private insurer. Lending institutions which customarily escrow will be required to escrow the natural disaster insurance premiums of residential property owners who live in natural disaster-prone states. Those living in natural disaster-prone states who~~

~~did not purchase the Corporation's or equivalent disaster coverage or who did not have flood insurance coverage (provided they are required to do under the National Flood Insurance Act) will be ineligible for federal disaster relief. For instance, homeowners whose annual household income exceed \$60,000 will be ineligible to receive Stafford Act individual or family assistance grants or similar federal disaster aid. Disaster assistance from SBA or similar federal agencies will also be denied to business owners if the business property is not insured with coverage that comports with the Corporation's residential policy coverage. The insurance purchase requirement will be conditioned on three events: (1) the establishment of the Corporation; (2) the implementation of terms and conditions of the primary coverage that fully satisfy the requirements described in section 914; and (3) the premium written by private insurers participating in the Corporation must represent at least 51% of the private U.S. residential insurance market.~~

~~Section 314. Terms and Conditions. This section authorizes the Corporation to set the terms and conditions of the primary insurance coverages, including the rates, deductibles, and limits on the amount of coverage. The terms and conditions are to limit the financial exposure of the private account to a manageable level, reflect rates and limits available in the primary market, and protect the financial viability of the Corporation. The Corporation will also set quota share amounts for both the earthquake and hurricane perils that insurers would agree to retain. For the seismic perils (earthquake, volcanic eruption, and tsunami), the Corporation will offer a 10% quota share. For hurricanes, the Corporation will offer a 50% quota share. For all these perils, insurers will have the option to retain higher quota share amounts. The private insurers participating as service providers will pay qualifying losses to the policyholders, provided the Corporation certifies that sufficient amounts are available in the primary account, including any federal loans, to fully reimburse the private insurers. Within 90 days of paying the claim, each private insurer will be reimbursed by the primary account. Private insurers participating as service providers will not be liable for payment of claims owed to policyholders under the Corporation's primary coverage.~~

~~Section 315. Flood Insurance. This section requires a study on means for increasing coverage of flood insurance. The study will make recommendations on whether the National Flood Insurance Program should be integrated into the Corporation's program and whether the NFIP should be privatized. In addition, this section requires insurers to include a specific warning on each residential policy that the policyholder is required to have flood insurance if the structure is located in a flood plain.~~

SUBTITLE C-REINSURANCE COVERAGE

~~This subtitle adds three sections that describe the operation of the reinsurance coverage to be offered by the Corporation.~~

~~Section 321. Scope of Coverage. This section authorizes the Corporation to provide catastrophic natural disaster reinsurance coverage to any private insurer or reinsurer or state insurance pools that wishes to purchase it. Reinsurance will be provided by the Corporation to cover residential losses (not covered under the primary coverages) and commercial losses caused by earthquakes, volcanic eruptions, tsunamis, and hurricanes. The commercial losses covered will include nine specific perils appearing on the National Association Insurance Commissioners annual statement (commercial multiple peril, workers' compensation, allied lines, fire, reinsurance, earthquake, liability, inland marine, and ocean marine) and additional lines that the Corporation believes are appropriate.~~

~~Section 322. Terms and Conditions. This section authorizes the Corporation to set the terms and conditions of the reinsurance coverage, including rates and limits on the coverage. The terms and conditions will be similar to those generally used in private catastrophic reinsurance contracts and will be standardized and designed to limit exposure of the reinsurance account to a manageable level. The Corporation will pay qualifying losses to those entities that purchased the reinsurance from the reinsurance account.~~

~~Section 323. Levels of Retained Losses. The section specifies the amount of losses that insurers and state insurance pools must retain before they qualify to receive reinsurance claims. The reinsurance claims will be reduced by any reinsurance recovered from private sources.~~

~~Industry-wide retained losses. Reinsurance will be available to private insurers if the property casualty industry as a whole is likely to incur gross losses (e.g., losses prior to deducting any anticipated private reinsurance payments) from catastrophic natural disasters occurring during any 12-month period that exceed 15% of the industry's consolidated surplus. Only separate events which cause at least \$1.5 billion in losses (adjusted for inflation) will be counted in reaching the 15% level. Once the industry has sustained this magnitude of loss, monies from the reinsurance account will pay 95% of a private insurer's losses which exceed 15% of that particular private insurer's consolidated surplus.~~

~~Individual private insurer retained losses. If the industry-wide retained losses level is not reached, individual private insurers can receive reinsurance if a single natural disaster resulted in losses that exceed 20% of that private insurer's consolidated surplus. At this point, monies from the reinsurance account will pay 95% of the private insurer's losses that exceed 20% of the private insurer's consolidated surplus up to a limit of 200% of the private insurer's surplus.~~

~~State insurance pools. Reinsurance will be available to state insurance pools if the~~

~~State insurance pool is likely to incur gross losses in the state served by the pool arising from natural disasters occurring during any 12 month period that exceed the lesser of 10 times the premiums earned in that state or \$10 billion (adjusted for inflation). This lesser amount, however, must equal at least \$500 million (adjusted for inflation). Once this level of losses has been reached, reinsurance will pay to state insurance pools 95% of the losses that exceed the lesser amount.~~

Section 301—National Commission on Catastrophe Loss Costs - The federal government shall create a commission to study and estimate loss costs resulting from catastrophic natural disasters

Membership. The Commission will be composed of 11 members appointed by the Secretary of Treasury. Members shall be U.S. citizens and the appointments must consist of a structural engineer, a meteorologist, a seismologist, 2 professional actuaries, two representatives of state insurance departments, one representative each from Treasury and FEMA, one representative of a U.S. insurer, and one consumer representative. Terms of service shall be for six years.

Functions. The Commission will issue and update lost costs for various levels of residential and commercial insurance coverage for the perils of earthquake, hurricane, volcano, and tsunami. This data will be filed for informational purposes with the federal government and with each state insurance department.

Advisory Committee. The Commission will establish a committee of experts to assist it in the development of the required information. Membership will include representatives of the insurance industry, disaster risk assessment and modeling experts, consumer groups, federal scientific agencies, and other experts in the field of disaster research.

Uses of Loss Costs. Private insurers may cite the Commission's data in submitting rates for approval by state insurance departments. Loss costs filed by the Commission would be presumptive if cited by insurers in rate filings. The Treasury shall rely on the Commission's data in setting reserve prices for its reinsurance contracts and state insurance pools which choose to purchase these contracts must rely on the commission loss cost estimates in pricing coverage they provide. In addition, if a Natural Disaster Insurance Corporation is created by the insurance industry, it would use the Commission's data in pricing its reinsurance coverage

Appeal. Once the Commission's estimates have been filed, any state insurance department, insurer, or other organization or individual may appeal the estimates first to the Commission and then through judicial review using the Administrative

Procedures Act scope of review.

Operating Costs. *The Commission's operating costs shall be funded on a surcharge placed on the sale of Treasury reinsurance contracts.*

Section 302 Federal Excess-of Loss Reinsurance Contracts - Language to be drafted by Clinton Administration

Section 303 Natural Disaster Insurance Corporation - Section to be used if needed to confer special tax status on NDIC or grant anti-trust exemption if determined appropriate

Section 304—Study on the Tax Treatment of Insurer Catastrophe Reserves - The legislation would require that the General Accounting Office in consultation with the insurance industry and others conduct a study on the tax treatment on insurance company reserves set aside for catastrophes. The study would assess the public policy benefits of providing more favorable tax treatment to insurers for the purpose of reserving for future disasters. The study would also assess both the short- and long-term impact such changes in tax law would have on the Treasury, consumers of insurance, and the economy.

Section 305. Flood Insurance. This section requires a study on means for increasing coverage of flood insurance. The study will make recommendations on whether the National Flood Insurance Program should be integrated into the Corporation's program and whether the NFIP should be privatized. ~~In addition, this section requires insurers to include a specific warning on each residential policy that the policyholder is required to have flood insurance if the structure is located in a flood plain.~~

Section 306. Insurance Pricing Incentives. This section encourages ~~private insurers participating as members of the Natural Disaster Insurance Corporation (created in section 901)~~ states to take natural disaster mitigation measures into account in setting rates and deductibles for property insurance.

~~Section 8. NATURAL DISASTER PROTECTION FUND. This section adds a new title IV with four sections to the EHR that creates a Natural Disaster Protection Fund (the "Fund").~~

~~Section 401. Establishment. This section creates the Fund as a trust fund within the Treasury Department with three separate accounts: (1) a Private Loss Account; (2) a Public Loss Account; and (3) a Mitigation Account. Co-mingling of funds or borrowing~~

between the three accounts will be prohibited.

~~Section 402. Private Loss Account.~~ This section specifies that the Private Loss Account will provide federal loans under the terms of section 306 to cover shortfalls in the primary and reinsurance accounts.

~~Section 403. Public Loss Account.~~ This section directs that the Public Loss Account provide grants to eligible states for the repair or rebuilding of highways and other critical facilities and lifelines damaged or destroyed by natural disasters. Grants will also be available for pre-disaster retrofitting and other hazard mitigation activities. The minimum federal share for these grants from this account will be 75% for states in compliance with the hazard mitigation standards (described in section 213) and 50% for states out of compliance (pursuant to section 214). Amounts in the Public Loss Account will be derived from three sources: (1) annually pursuant to title IV of the Stafford Act for repair and restoration of damaged federal facilities, state public facilities, critical facilities and lifelines; (2) from the public infrastructure rebuilding portions of any natural disaster emergency supplemental appropriations bill; and (3) annually from eight specified public infrastructure programs (the Highway Trust Fund, the Airport and Airway Trust Fund, the Harbor Maintenance Trust Fund, water treatment grants, the Soil Conservation Service, the Economic Development Administration, the Corps of Engineers, and the General Services Administration), provided that such amounts will be in addition to annual appropriations for these eight programs. The section requires that the Public Loss Account maintain a reserve sufficient to cover the anticipated costs resulting from natural disasters up to the annual ten-year historical average of disaster relief provided by FEMA. Finally, a general authorization will be provided for all three of these sources of funds for the Public Loss Account.

~~Section 404. Mitigation Account.~~ This section specifies that the funds for the Mitigation Account will be used to support hazard mitigation efforts (described in subtitle B of title III). Amounts in the fund will be derived from two sources: (1) a percentage of the premiums from the primary and reinsurance coverages which equals \$200 million annually (adjusted for inflation) will be rebated to the Mitigation Account; and (2) appropriations for pre-natural disaster hazard mitigation activities under the Stafford Act will be deposited annually into the account. This section provides an authorization for the \$200 million percentage set aside.

~~Section 9. FEDERAL DISASTER ASSISTANCE AMENDMENTS.~~ This section amends the Stafford Act in two respects to make the provision of federal disaster assistance more equitable. First, federal aid for states will be available only after the state had paid, or agreed to pay, at least \$5 per each state resident for repair and reconstruction of public facilities damaged by a natural disaster. Second, the federal share of disaster aid will be set at 75% and a higher federal share can only be obtained through the enactment of separate legislation that must be on budget and paid for (unless budget points of order are expressly waived under Gramm-Rudman).

This is done
in Comments

See pp 2-3

Draft: 4/4/96

Initial Comments on Natural Disaster Coalition Revised Proposal

NAIC Catastrophe Insurance (C) Working Group

Note: This document presents some initial comments on the major components of the Natural Disaster Coalition's (NDC) revised proposal for federal disaster insurance legislation, based on the NAIC's understanding of the NDC proposal. These are preliminary draft comments that are being utilized for discussion purposes only and are subject to revision. The Catastrophe Insurance Working Group has not yet adopted these comments as a representation of its views. This document should not be cited or quoted without permission of the NAIC.

Overview

Current proposed federal disaster insurance legislation in the form of HR 1856 and SB 1043 have met significant opposition with respect to some of their specific provisions. Consequently, supporters of this legislation and other interested parties have been discussing possible changes to the legislation which would gain greater support. The Natural Disaster Coalition (NDC) has played a principal role in drafting this legislation and has presented an outline of a revised bill which would have the following major components:

1. a national "loss cost commission" which would develop loss costs for residential exposures for earthquake, hurricane, tsunami, and volcano perils for relevant residential and commercial insurance coverages;
2. the administration's proposed excess-of-loss (XOL) reinsurance contracts that would cover disaster losses between \$25-\$50 billion (see attached preliminary comments on administration proposal);
3. a private Natural Disaster Insurance Corporation (NDIC) that would serve as a disaster reinsurance pool for disaster losses falling between \$25 billion and some lower level adequately served by existing markets;
4. a study of more favorable tax treatment of catastrophe reserves; and
5. a mitigation component.

The working group's current understanding of the NDC proposal is based on the attached outline and verbal discussions with the NDC. The working group's comments may be revised and extended as it acquires additional information and discusses it with the NDC

and other interested parties. The working group's initial comments on the specific components of the NDC proposal follow.

Loss Cost Commission

The attached NDC outline indicates that the proposed loss cost commission would be governed by an 11-member board, appointed by the Secretary of the Treasury, which would include three scientific experts, one actuary, two state regulators, one insurer, one consumer representative and two federal agency designees. The commission also would seek input from an advisory committee consisting of various experts and interested parties.

The commission would file disaster loss costs with all state insurance departments. As proposed by NDC, the filed loss costs would be determinative for insurers choosing to use the data in the preparation of rate filings. Regulators could not modify or disapprove the commission loss costs.¹ Alternatively, insurers could cite their own loss cost data subject to state review. The administration's proposed excess-of-loss (EOL) reinsurance contracts, state catastrophe pools purchasing EOL contracts, and the NDIC also would be required to rely on commission loss cost data, where relevant.

Actions of the commission could be challenged, first, through an administrative appeal process, and second, by judicial review.

The working group believes that improving the science and consensus underling disaster risk assessment and insurance pricing would be helpful in improving insurer, consumer, and regulator decisions. Various mechanisms might be explored to help achieve this objective, including the proposed loss cost commission. However, the proposed "determinative" nature of the loss cost information developed by the commission raises a concern about its potential unnecessary intrusion upon state insurance regulatory authority. Alternatively, the results of the commission's analysis could be disseminated purely on an informational basis without forcing regulators to accept this information without question or change if insurers include it in their rate filings.

The working group needs further details on the role, functions and structure of the loss cost commission in order to offer additional comments. The work of the Catastrophe Modeling Subgroup should contribute to evaluating the merits of the proposed loss cost commission.

The working group has a number of questions with respect to the loss cost commission:

¹ It is the working group's understanding that the NDC proposal would allow regulators' to appeal the commission's promulgated loss costs to the commission.

1. Would this commission be the best approach to improving and disseminating information on disaster risk that is needed for mitigation efforts as well as insurance market functions?
2. Would the commission be subject to public oversight by the Secretary of the Treasury? Would the commission be subject to examination by the Secretary or some other government authority?
3. What would be the scope and depth of the analysis performed by the commission?
4. Would the commission promulgate data on loss adjustment expense?
5. How would insurers apply commission loss costs to their particular book of business and exposures?
6. Why would commission loss costs need to be presumptive in rate filings with state insurance regulators? Does this unnecessarily usurp state regulatory authority?
7. Would insurers be required to use commission loss costs? If not, does this give insurers and inherent advantage in regulatory proceedings if regulators are forced to accept commission loss costs if filed by the insurer?
8. What would be the status of loss costs under appeal? Could insurers use them in the interim?
9. Why must interested parties wait till an insurer files loss costs before appealing them to the commission?
10. How much would the commission cost?
11. Will insurers be required to report any data to the commission to support its analysis?
12. How long would it take to set up the commission and produce its initial analysis and what will happen in the interim?
13. To what extent will the data and analysis compiled by the commission be available to the public?

Excess-of-Loss Reinsurance Contracts

The administration's proposal for excess-of-loss (XOL) reinsurance contracts is discussed in some detail in the attached analysis of that proposal. The working group believes that the administration's proposal offers a potentially viable concept that deserves further consideration. A number of technical questions need to be addressed, however. The proposed XOL contracts could add an important layer of reinsurance capacity. At the

same time, the working group recognizes that the administration proposal is not intended to be a total solution to disaster insurance market capacity and availability problems. Hence, it will need to be supplemented by other government and private sector actions to ensure an adequate supply of disaster insurance coverage.

Some of the questions with respect to the XOL contracts are:

1. How difficult will it be to set a viable reservation price that will protect the government's interest and, yet, be attractive to buyers?
2. How well will the secondary market for these contracts function to maximize liquidity and use to diversify risk?
3. What logistical difficulties will face the government in verifying qualifying losses by contract holders?
4. Will the \$50 billion cap reflect a public decision on the limit of private and public insurance to diversify disaster risk? How will disaster costs in excess of \$50 be allocated?

Natural Disaster Insurance Corporation (NDIC)

The working group does not have specific details on this component of the NDC proposal but it understands that the NDIC is intended to be a private corporation that will provide additional disaster reinsurance capacity that is not supplied either by existing markets or the administration's XOL contracts. Without more details, the working group cannot comment on the specific merits of this part of the NDC proposal. It is possible to make two general observations. The first is that the XOL contracts and existing reinsurance markets alone will not provide sufficient reinsurance capacity to alleviate constraints on the supply of disaster insurance that are affecting a number of states. A mechanism, such as the NDIC, could help to fill the remaining gap in needed reinsurance capacity. The second observation is that the NDIC should be subject to appropriate regulatory oversight, consistent with oversight of other insurance companies.

More specific questions on the proposed NDIC follow:

1. What is the specific structure of the contemplated private NDIC and how will it fill a gap in missing reinsurance capacity?
2. Will the NDIC be subject to state insurance regulation as other licensed U.S. reinsurers?
3. What financial requirements will state regulators impose to consider the NDIC as an authorized reinsurer and grant credit for reinsurance recoverables from NDIC?

4. How will NDIC be capitalized and what will be its vulnerability to insolvency? Will other insurers and reinsurers participate in NDIC in some way and provide certain financial guarantees? What would be the impact if NDIC became insolvent?

More Favorable Tax Treatment of Catastrophe Reserves

The NAIC, along with other interested parties, has called for a review of the tax treatment of catastrophe reserves. Current federal tax law provides a disincentive for insurers to accumulate catastrophe reserves over time which is critical to appropriate risk diversification given the low frequency and high severity of catastrophe losses. The working group understands that changing tax law in this area raises a number of issues, including: 1) the impact on tax revenues; 2) ensuring that appropriate reserves are established and are not manipulated to avoid taxes; and 3) the effect on insurers' reported surplus. The relevant issues should be examined and resolved, if possible. Favorable tax treatment of catastrophe reserves could be a good way of enabling the private sector to increase the supply of disaster insurance and enhance its solidity without extensive government intervention. The Catastrophe Reserve Subgroup is examining the issues associated with catastrophe reserves and its analysis should assist development of legislation in this area.

Mitigation

The working group cannot comment on this component of the NDC proposal without more information. In general, the working group believes that mitigation of natural hazards should be an important component of any legislative package. Mitigation is the only way to reduce disaster losses and it could help to improve the insurability and affordability of disaster risk. Government at all levels and the private sector have an important role to play in mitigation. Ideally, increased information and appropriate economic incentives would encourage an optimal level of mitigation. Insurance could be one of the mechanisms used to encourage better mitigation. Regulation and some government financing of mitigation also may be necessary to ensure an optimal level of mitigation. The economic effects that would be caused by any legislative proposal and the transitions required need to be carefully considered, however.

The working group's questions on mitigation follow:

1. Is the proposed reduction in federal disaster for non-compliance with mitigation standards, coupled with other proposed measures, a sufficient incentive to induce the desired level of mitigation?
2. Is it counterproductive to withhold mitigation funds from non-complying jurisdictions?
3. Is the proposed pro-rata formula for distributing mitigation funds based on disaster exposure data the most efficient approach and equitable approach? Will the formula

consider the severity of the natural hazard as well as the vulnerability of current structures? Should the economic resources of communities be considered?

Insurance Pricing Incentives

The NDC outline also contains Section 306 - Insurance Pricing Incentives. What is meant by the description of this section, particularly the term "setting rates and deductibles"? What requirements would this section impose on state regulators, government-sponsored insurance funds and residual market mechanisms, and private insurers? What other measures would be employed to encourage the desired response?

Summary

The working group believes that the revised NDC proposal, as described, deserves serious consideration. However, the working group opposes any unnecessary intrusion upon state regulatory authority and private sector activities, such as the proposed determinative nature of the information generated by the proposed loss cost commission. The working group looks forward to discussing this proposal further with Congress, the NDC and other interested parties and working cooperatively with these parties to address disaster insurance market problems.

DRAFT

**Amendment in the Nature of a
Substitute for H.R. 1856**

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act shall be cited as the "Natural Disaster Protection Partnership Act of 1996".

SEC. 2. FINDINGS AND PURPOSES.

Section 101 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121) is amended as follows:

(1) In subsection (a), by –

(A) striking "and" at the end of paragraph (1);

(B) inserting "and" following the semi-colon in paragraph (2);

(C) inserting the following new paragraph before "special measures":

"(3) because catastrophic natural disasters, such as major hurricanes, earthquakes, volcanic eruptions, tsunamis, and floods, pose significant problems in terms of substantial long-term consequences, ill-equipped preparedness efforts, lack of hazard mitigation measures (such as enforced building codes), and inadequate insurance coverage;"

(D) inserting “promoting hazard mitigation compliance and in” after “affected States in”; and

(E) inserting “insurance coverage,” after “rendering of aid, assistance,”.

(2) In subsection (b), by –

(A) inserting before the semi-colon in paragraph (1) “by including State and community disaster mitigation and expanded insurance and reinsurance coverage to supplement insurance available in the private market”;

(B) inserting after “preparedness” in paragraph (2) “, hazard mitigation compliance,”;

(C) inserting after “preparedness” in paragraph (3) “, hazard mitigation, emergency response,”;

(D) inserting after “insurance coverage” in paragraph (4) “with premiums based on risk”;

(E) inserting before the semi-colon in paragraph (5) “, adoption and enforcement of building codes, and improvement of emergency responder capabilities”; and

(F) inserting after "disasters" in paragraph (6) "and establishing a funding mechanism to help States and communities pay for pre-disaster hazard mitigation."

SEC. 3. DEFINITIONS.

Section 102 of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122) is amended by adding at the end the following new paragraphs:

"(10) The term 'building' means any structure, fully or partially enclosed, used or intended for housing persons or sheltering property.

"(11) The term 'business property' means non-residential property subject to commercial losses.

"(12) The term 'commercial losses' means physical damage losses to insured commercial (other than residential) property and other losses arising out of the effects of earthquakes, volcanic eruptions, tsunamis, and hurricanes for the following lines of insurance appearing in the National Association of Insurance Commissioners Fire and Casualty Annual Statement:

"(A) Commercial Multiple Peril.

"(B) Workers' Compensation.

"(C) Allied Lines.

“(D) Fire.

“(E) Reinsurance.

“(F) Liability.

“(G) Earthquake.

“(H) Inland Marine.

“(I) Ocean Marine.

“(13) The term ‘critical facilities and lifelines’ means major public infrastructure, including highways, roads, bridges, mass transit facilities, airports, public buildings, water transportation and treatment facilities, electric utilities, electric power and natural gas transmission lines, and telecommunication facilities.

“(14) The term ‘Director’ means the Director of the Federal Emergency Management Agency.

“(15) The term ‘earthquake’ means any shaking or trembling of the crust of the Earth caused by underground seismic forces.

“(16) The term ‘emergency responder’ means fire-fighting, law enforcement, emergency medical personnel, and any other emergency services which have the statutory or regulatory authority to engage in and provide emergency response services.

“(17) The term ‘flood’ or ‘flooding’ means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters or the unusual and rapid accumulation of runoff or surface waters from any source.

“(18) The term ‘hazard mitigation’ means sustained action taken to reduce or eliminate long-term risk to people and property from natural disaster hazards and their effects.

“(19) The term ‘hurricane’ means a non-frontal, warm core, low pressure atmospheric system having a definite organized circulation with sustained wind speeds of 74 miles per hour or greater and officially declared to be a hurricane by the National Hurricane Center, including any associated windstorm events occurring within 168 hours before and after the hurricane first makes landfall within a State.

“(20) The term ‘local community’ means a local government that has a department, or similar entity, which oversees local zoning and building code compliance efforts.

“(21) The term ‘loss costs’ means the pure expected, actuarially-based amount that is sufficient to pay expected losses resulting from a particular peril and shall not include loss adjustment expense, administrative expense, taxes, commissions, profits, and contingencies.

“(22) The term ‘new’, when used in connection with buildings, construction, or property, means structures built pursuant to building permits issued after the date of enactment of the Natural Disaster Protection Partnership Act of 1996.

“(23) The term ‘private insurer’ means any private insurer or private reinsurer, including all related affiliates or subsidiaries under the same ownership or management consistent with the definition of affiliated group under section 1504(a) of the Internal Revenue Code of 1986 (26 U.S.C. 1504(a)), that is licensed or admitted to write property and casualty insurance or reinsurance within a State.

“(24) The term ‘residential property’ means any 1- to 4-family residential building (including mobile or manufactured homes).

“(25) The term ‘State insurance pool’ means any State-authorized joint underwriting or joint reinsurance association, risk pool, residual market mechanism, or other type of State-sanctioned entity providing property insurance coverage against hurricanes, earthquakes, volcanic eruptions, or tsunamis.

“(26) The term ‘substantially modified building construction’ means additions or improvements to an existing building which constitute over an

18-month period at least a 50 percent increase in the current value of the building, as measured by the most recent official property assessment.

“(27) The term ‘tsunami’ means an ocean wave generated by underwater disturbances in the earth’s crust, primarily earthquakes and submarine volcanic eruptions.

“(28) The term ‘volcanic eruption’ means the expulsion, as a result of natural causes, of molten rock, rock fragments, gases, ashes, mud, lava flows, and other natural substances through an opening in the crust of the Earth.

“(29) The term ‘windstorm’ means an atmospheric disturbance marked by high velocity movements of air, including a tornado or an extratropical storm such as a noreaster, but does not include a hurricane.”.

SEC. 4. FEDERAL DISASTER ASSISTANCE.

(a) STATE CO-INSURANCE.—Section 406(a)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172(a)(1)) is amended by inserting the following before the semicolon: “, provided the State has paid, or agreed to pay through insurance or self-insurance coverage, at least \$5 per each resident of the State, as determined by the latest official census, for the repair, restoration, reconstruction, or replacement of buildings owned by that State or by

a local government within the State which were damaged or destroyed by such major disaster in the State”.

(b) FEDERAL SHARE OF FINANCIAL ASSISTANCE.—

(1) PUBLIC FACILITIES.—Section 406(b) of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172(b)) is amended as follows:

(A) Strike “MINIMUM” and “not less than”.

(B) Insert following the first dash “(1) SHARE AMOUNTS.—”.

(C) Redesignate paragraphs (1), (2), and (3) as subparagraphs

(A), (B), and (C) respectively.

(D) Add at the end the following new paragraph:

“(2) WAIVER.— The Federal share percentages described in paragraph (1), as may be modified by section 804(a), shall be increased only upon the enactment of a joint resolution, which may be included as part of a supplemental appropriation Act, provided it is not designated as an emergency under section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)).”.

(2) DEBRIS REMOVAL.—Section 407(d) of The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5173(d)) is amended as follows:

(A) Insert following the subsection heading “(1) SHARE AMOUNT.–”.

(B) Strike “not less than”.

(C) Add at the end the following new paragraph:

“(2) WAIVER.–The Federal share percentage described in paragraph (1), as may be modified by section 804(a), shall be increased only upon the enactment of a joint resolution, which may be included as part of a supplemental appropriation Act, provided it is not designated as an emergency under section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)).”.

(c) TEMPORARY HOUSING ASSISTANCE.–

(1) PROVISION OF TEMPORARY HOUSING.–Section 408(a)(3) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174(a)(3)) is amended by striking “18” both places it appears and inserting in lieu thereof “12”.

(2) TEMPORARY MORTGAGE AND RENTAL PAYMENTS–
Section 408(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174(b)) is amended by striking “18” in the last sentence and inserting in lieu thereof “12”.

(d) INDIVIDUAL AND FAMILY GRANTS.—Section 411 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5178) is amending by adding at the end the following new paragraph:

“(g) ELIGIBILITY.—Individuals and families shall be eligible to receive grants under this section if their annual household income for the year preceding the major disaster was less than \$100,000, adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.”.

(e) INTEREST RATE FOR DISASTER LOANS.—Notwithstanding the provisions of any other law, the interest rate on the Federal share of any disaster loan made under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) for a disaster commencing after enactment of this Act shall be set at a rate determined by the Secretary of the United States Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such disaster loans, plus an additional charge not to exceed 200 basis points.

(f) EXCLUSION FOR LACK OF INSURANCE.—

(1) RESIDENTIAL PROPERTY.—Residential property owners shall be ineligible to receive any financial assistance provided under sections 408 or 411 of the Robert T. Stafford Disaster Relief and Emergency Assistance

Act (42 U.S.C. 5174 and 5178), section 7(b) of the Small Business Act (15 U.S.C. 636(b)), or any other similar disaster assistance provided by any Federal agency if—

(A) the residential property was not insured at the time of the natural disaster for the specific peril which caused the damage for which the financial assistance is requested; and

(B) the annual household income of the residential property owner exceeds \$40,000, adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) **BUSINESS PROPERTIES.**—Owners of business properties shall be ineligible to receive any financial assistance provided under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) or any other similar disaster assistance provided by any Federal agency if the business property was not insured at the time of the natural disaster for the specific peril which caused the damage for which the financial assistance is requested.

(3) **CONDITION.**—Paragraphs (1) and (2) shall not apply to a property owner if said owner demonstrates to the head of the Federal agency responsible for administering the financial assistance that insurance

for the peril which caused the damage for which the financial assistance is requested is not reasonably available in the marketplace.

SEC. 5. AMENDMENTS TO THE ACT.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) is amended by adding at the end the following new titles:

“TITLE VIII–DISASTER MITIGATION

“SEC. 801. ADOPTION OF BUILDING AND SAFETY CODES.

“(a) STATE ADOPTION OF MULTI-HAZARD BUILDING AND SAFETY CODES.–At a minimum, each State shall either–

“(1) adopt for all new and substantially modified building construction in that State building codes that meet the appropriate hurricane, windstorm, earthquake, volcanic eruption, or tsunami natural disaster hazard mitigation portions of the newest edition of–

“(A) at least 1 of the following model building codes which shall be applicable to regions that are exposed to such natural disaster perils:

“(i) the National Building Code,

“(ii) the Standard Building Code,

“(iii) the Uniform Building Code;

“(iv) the International Code Council Uniform Code,

“(v) the Council of American Building Officials 1 and 2 Family Dwelling Code (for applicable residential property);
and

“(B) other relevant building and housing codes and standards, including the national consensus safety codes of the National Fire Protection Association (specifically the National Electrical Code, the National Fuel Gas Code, the Flammable and Combustible Liquids Code, and the Standard for the Storage and Handling of Liquefied Petroleum Gases) and the Federal manufactured home construction and safety standards developed under section 604 of the Housing and Community Development Act of 1974 (42 U.S.C. 5403) or

“(2) provide to the Director a list of the State’s local communities which have not adopted codes that meet the appropriate minimum natural disaster hazard mitigation portions of any of the model building codes and other building and housing codes and standards described in paragraph (1) for all new and substantially modified building construction in that State.

“(b) STATE ADOPTION OF FLOOD PERFORMANCE STANDARDS.—

At a minimum, each State that contains local communities located within flood-prone areas or flood-risk zones as identified under section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) shall either—

“(1) adopt the relevant flood minimum performance standards, flood-proofing, and other flood protection measures authorized pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), which minimize flood damage for new and substantially modified building construction in local communities which are within flood-prone areas or flood-risk zones; or

“(2) provide to the Director a list of the State’s local communities within flood-prone areas or flood-risk zones which have not adopted the minimum performance standards described in paragraph (1) for new and substantially modified building construction.

“(c) LOCAL COMMUNITY ADOPTION OF BUILDING CODES AND STANDARDS.—Each local community identified and submitted to the Director in—

“(1) subsection (a)(2) shall adopt building codes that meet the appropriate minimum natural disaster hazard mitigation portions of at least 1 of the model building codes and the other building and housing codes and standards described in subsection (a)(1) for all new and substantially modified building construction in that local community; and

“(2) subsection (b)(2) shall adopt the minimum flood performance standards described in subsection (b)(1) for new and substantially modified building construction in that local community.

“SEC. 802. DEVELOPMENT OF STATE MITIGATION PLANS.

“(a) GENERAL AUTHORITY.—Each State shall either—

“(1) develop with active public participation a mitigation plan which establishes the State’s plan with accompanying schedules for improving the State’s ability to reduce the hazards of future natural disasters, such as hurricanes, windstorms, earthquakes, volcanic eruptions, tsunamis, and floods; or

“(2) designate an existing mitigation plan which includes the processes described in subsection (b).

“(b) CONTENT OF STATE MITIGATION PLANS.—Each State mitigation plan described in subsection (a) shall include, at a minimum, a process for accomplishing activities which will best promote the purposes of hazard mitigation by—

“(1) achieving compliance with building and safety codes, including those described in section 801;

“(2) improving the capabilities for emergency response to natural disasters which shall include capabilities for fire fighting, search and rescue, and the provision of shelters, communications, and medical relief;

“(3) developing standards and guidelines for the regular training of emergency responders to minimize the effects of natural disasters;

“(4) achieving enforcement of local community land use ordinances;

“(5) addressing further development in high-risk, disaster-prone areas and the impact of such development on life safety and the environment; and

“(6) identifying and prioritizing essential critical facilities and lifelines and public facilities to be cost-effectively retrofitted based on the availability of resources.

“(c) APPROVAL OF PLAN.—The Director shall review each State mitigation plan submitted pursuant to section 803(a)(1) and promptly approve such plan if it contains the processes described in subsection (b).

**“SEC. 803. TIME PERIODS FOR STATE DEVELOPMENT AND
IMPLEMENTATION OF BUILDING CODES AND
MITIGATION PLANS.**

“(a) TIME PERIODS.—Each State and local community, as appropriate, shall meet the following mitigation compliance milestones:

“(1) SUBMISSION OF STATE MITIGATION PLANS TO FEMA.—

Within 2 years from the issuance of Federal regulations described in subsection (c), each State shall submit to the Director its mitigation plan developed pursuant to section 802.

“(2) ADOPTION OF BUILDING CODES.—Within 3 years from the date of enactment of the Natural Disaster Protection Partnership Act of 1996, each State, and each local community described in section 801(c), shall certify to the Director that it has adopted the appropriate building and safety codes or performance standards identified in section 801.

“(3) IMPLEMENTATION OF MITIGATION PLANS.—Within 2 years of the Director approving the mitigation plan pursuant to section 802(c), each State shall certify to the Director that the processes of its mitigation plan as described in section 802(b) are being implemented.

“(4) BUILDING CODE ENFORCEMENT.—Within 4 years of the issuance of the Federal regulations described in subsection (c), each State, or each local community described in section 801(c), shall certify to the Director based on assessments by the Insurance Services Office that enforcement of building and safety codes identified in section 801 is being achieved.

“(b) NOTIFICATION AND OPPORTUNITY TO CURE.—The Director shall promptly notify in writing any State or local community which does not meet a compliance requirement described in subsection (a). If after receiving such notification, the State or local community does not take corrective action within 180 days, the State or local community shall be subject to the provisions specified in section 804 until such date as the Director determines that the State or local community has taken the necessary corrective action.

“(c) REGULATIONS.—Within 12 months of the date of enactment of the Natural Disaster Protection Partnership Act of 1996, the Director shall issue final Federal regulations, pursuant to the provisions of subchapter II of chapter 5 of title 5, United States Code, necessary to carry out this section. These regulations shall include guidance to States and local communities as to what constitutes adequate compliance with the hazard mitigation measures of this title.

“SEC. 804. SHARE OF FINANCIAL ASSISTANCE.

“(a) REDUCED FEDERAL SHARE FOR DISASTER AID.—The Federal share of public assistance available under sections 406(b)(1) and 407(d)(1) shall be reduced to 50 percent for any State or local community which has not met, within the prescribed time periods, the requirements of section 803.

“(b) MITIGATION FUNDS.—Amounts from the Mitigation Fund under section 805 shall be denied to States or local communities which have not met, within the prescribed time periods, the requirements of section 803.

“SEC. 805. NATURAL DISASTER HAZARD MITIGATION FUND.

“(a) ESTABLISHMENT.—There is established within the Treasury of the United States a trust fund to be known as the Natural Disaster Hazard Mitigation Fund (hereinafter referred to as the ‘Mitigation Fund’), consisting of such amounts as may be transferred or credited to it as provided in subsection (c).

“(b) MITIGATION SET ASIDE.—The Secretary of the United States Treasury shall set aside a portion of the proceeds of the sale of the catastrophic excess-of-loss contracts as described in section 902 to be transferred to the Mitigation Fund.

“(c) DEPOSITS.—The Director shall transfer and credit on an annual basis to the Mitigation Fund amounts—

“(1) received from the set aside of the annual proceeds described in subsection (b); and

“(2) appropriated for hazard mitigation purposes under section 404 but not allocated by the Director during the fiscal year in which they were appropriated.

“(d) FUNDS TO STATES.—

“(1) AUTHORITY.—All the amounts in the Mitigation Fund shall be allocated by the Director to States at the beginning of every fiscal year following the date of enactment of the Natural Disaster Protection Partnership Act of 1996, except that those States subject to the provisions of section 804(b) shall be denied such funds.

“(2) FORMULA.—The Mitigation Fund amounts shall be allocated to a State based on a pro rata formula of the catastrophe loss costs filed for that State as described in section 901(c)(3). Within 12 months of the date of enactment of the Natural Disaster Protection Partnership Act of 1996, the Director shall issue final Federal regulations, pursuant to the provisions of subchapter II of chapter 5 of title 5, United States Code, describing the pro rata formula.

“(e) USE.—

“(1) IN GENERAL.—The amounts received by States from the Mitigation Fund shall be used to support natural disaster hazard mitigation activities, which may include assistance for—

“(A) training of emergency responders;

“(B) State revolving loan funds, if established, to undertake financing, including the leveraging of funds for various hazard mitigation activities;

“(C) low-income individuals and families to help pay for the undertaking of hazard mitigation measures;

“(D) the dissemination of cost-effective technologies to prevent or substantially reduce damage caused by natural disasters and for the establishment of geographically-dispersed and duly-incorporated natural disaster damage prevention and mitigation Centers for Protection Against Natural Disasters to carry out such dissemination;

“(E) addressing further development in high-risk, disaster-prone areas and the impact of such development on the environment; and

“(F) pre-natural disaster hazard mitigation, including retrofitting of critical facilities and lifelines and public facilities.

“(2) PRIORITY.—The States shall give priority in using the amounts received from the Mitigation Fund to those hazard mitigation activities necessary to bring the State into compliance with the building and safety code requirements of section 801 and the mitigation plan requirements of section 802.

“(f) LOCAL COMMUNITIES.—States shall provide not less than 25 percent of the amounts received each year under this section to local communities to support activities necessary to ensure State compliance with the hazard mitigation requirements of this subtitle.

“(g) AUDITS.—The Director, in consultation with the States, shall from time-to-time conduct audits to ensure that States and local communities are using the amounts received each year under this section to support the hazard mitigation activities described in this section.

“Sec. 806. NO UNFUNDED MANDATES.

“(a) IN GENERAL.— If a State documents to the Director that such State has not received adequate amounts from the Mitigation Fund established by section 805 to cover the costs of complying with a particular mitigation requirement described in this title, that particular mitigation requirement shall not apply to such State.

“(b) EXCEPTIONS.—

“(1) ADEQUATE AMOUNTS.—Subsection (a) shall not apply to hazard mitigation requirements described in this title for which the State has failed to document that it has received an inadequate amount of funds from the Mitigation Fund to fully cover the cost of complying with such mitigation requirements.

“(2) NON-COMPLIANCE STATES.—Subsection (a) shall not apply to States that are subject to the provisions of section 804(b).

“(3) CONDITIONAL FEDERAL ASSISTANCE.—Subsection (a) shall not apply to any duty imposed by this title that is a condition of any Federal assistance provided by this Act.

“SEC. 807. STUDIES AND RESEARCH.

“(a) NATURAL DISASTER PERFORMANCE GUIDELINES FOR CRITICAL FACILITIES.—

“(1) STUDY.—The Director shall enter into an arrangement with the National Academy of Sciences to conduct a study on the maintenance of functions and operations of critical facilities and lifelines and public facilities following a natural disaster. The study shall recommend specific performance guidelines for the design and retrofitting of such facilities to maximize their continued functionality following a natural disaster.

“(2) NATIONAL ACADEMY OF SCIENCES.—The study described in paragraph (1) shall be performed by a panel of recognized experts appointed by the National Academy of Sciences. The experts shall include building constructors, architects, design engineers, building officials with the model building code organizations, State and local public officials, and other experts deemed relevant by the National Academy of Sciences.

“(3) COMPLETION OF STUDY.—The results of the study described in paragraph (1), including the recommended performance guidelines, shall be transmitted by the National Academy of Sciences to the Director and to Congress within 2 years of the date of enactment of the Natural Disaster Protection Partnership Act of 1996.

“(b) DISSEMINATION AND EXPANSION OF NATURAL DISASTER RESEARCH.—

“(1) STUDY.—The Director shall enter into an arrangement with the National Academy of Sciences to conduct a study and make recommendations on—

“(A) the best means of disseminating research and development results on natural disaster hazards to State and local governments, State insurance departments, and private insurers; and

“(B) specific ways for expanding research on the hazards associated with hurricanes and windstorms to assist in the development of potential building construction guidelines.

“(2) NATIONAL ACADEMY OF SCIENCES.—The study described in paragraph (1) shall be performed by a panel of recognized experts appointed by the National Academy of Sciences. The experts shall include experts in the fields of meteorology, seismology, and hazard mitigation and

shall include representatives of research laboratories, design engineers, private insurers, State insurance departments, and building code officials from the model building code organizations, and other experts deemed relevant by the National Academy of Sciences.

“(3) COMPLETION OF STUDY.—The results of the study described in paragraph (1), including any recommendations on disseminating and expanding natural disaster hazard research, shall be transmitted by the National Academy of Sciences to the Director and to Congress within 2 years of the date of enactment of the Natural Disaster Protection Partnership Act of 1996.

“(c) EVALUATION OF HAZARD MITIGATION PROGRAMS.—

“(1) STUDY.—The Director shall enter into an arrangement with the National Academy of Sciences to evaluate the hazard mitigation programs authorized under this title. The evaluation shall—

“(A) assess the extent to which the societal objectives of improving the response to and reducing losses and Federal disaster assistance from future natural disasters have been accomplished;

“(B) identify additions, deletions, or changes to the hazard mitigation programs authorized by this title which would better achieve the societal objectives described in subparagraph (A); and

“(C) recommend any further evaluation.

“(2) NATIONAL ACADEMY OF SCIENCES.—The study described in paragraph (1) shall be performed by a panel of recognized experts appointed by the National Academy of Sciences. The experts shall include experts in the fields of hazard mitigation, including building constructors, design engineers, building code officials from the model building code organizations, State and local community officials, and other experts deemed relevant by the National Academy of Sciences.

“(3) COMPLETION OF STUDY.—The results of the study described in paragraph (1), including any recommendations, shall be transmitted by the National Academy of Sciences to the Director and to Congress within 5 years of the date of enactment of the Natural Disaster Protection Partnership Act of 1996.

“TITLE IX—NATURAL DISASTER INSURANCE

“SEC. 901. NATIONAL COMMISSION ON CATASTROPHE LOSS

COSTS.

“(a) ESTABLISHMENT.—There is established a National Commission on Catastrophe Loss Costs (in this section referred to as the ‘Commission’) to estimate loss costs from catastrophic natural disasters.

“(C) recommend any further evaluation.

“(2) NATIONAL ACADEMY OF SCIENCES.—The study described in paragraph (1) shall be performed by a panel of recognized experts appointed by the National Academy of Sciences. The experts shall include experts in the fields of hazard mitigation, including building constructors, design engineers, building code officials from the model building code organizations, State and local community officials, and other experts deemed relevant by the National Academy of Sciences.

“(3) COMPLETION OF STUDY.—The results of the study described in paragraph (1), including any recommendations, shall be transmitted by the National Academy of Sciences to the Director and to Congress within 5 years of the date of enactment of the Natural Disaster Protection Partnership Act of 1996.

“TITLE IX—NATURAL DISASTER INSURANCE

“SEC. 901. NATIONAL COMMISSION ON CATASTROPHE LOSS COSTS.

“(a) ESTABLISHMENT.—There is established a National Commission on Catastrophe Loss Costs (in this section referred to as the ‘Commission’) to estimate loss costs from catastrophic natural disasters.

“(b) MEMBERSHIP.—

“(1) APPOINTMENT.—

“(A) INITIAL APPOINTMENT.—The Commission shall be composed of 11 members appointed by the Secretary of the United States Treasury (hereinafter in this title referred to as the ‘Secretary’) within 90 days of enactment of the Natural Disaster Protection Partnership Act of 1996.

“(B) VACANCIES.—The Secretary shall immediately appoint new members to fill any vacancies so that the composition of the Commission at all times meets the qualification requirements described in paragraph (2).

“(2) QUALIFICATIONS.—The members appointed to the Commission described in paragraph (1) shall be citizens of the United States and shall consist of the following:

“(A) 1 structural engineer who shall not be an employee of the Federal government.

“(B) 1 meteorologist who shall not be an employee of the Federal government.

“(C) 1 seismologist who shall not be an employee of the Federal government.

“(D) 2 professional actuaries who have previous experience in developing or setting actuarially sound property and casualty rates, provided they are not employees of a private insurer, the Federal government, or any State department of insurance.

“(E) 2 representatives from State departments of insurance.

“(F) 1 representative from the United States Treasury Department.

“(G) 1 representative from the Federal Emergency Management Agency.

“(H) 1 representative from a private insurer.

“(I) 1 representative from the consumers of property and casualty insurance.

“(3) CHAIRPERSON.—The Secretary shall designate a chairperson of the Commission from among members appointed to the Commission.

“(4) TERMS OF SERVICE.—All members appointed under paragraph (1) shall serve staggered 6-year terms as determined by the Secretary at the time of appointment.

“(c) FUNCTIONS.—

“(1) ESTIMATE LOSS COSTS.—The Commission shall estimate, and update at least once every two years, for geographic risk territories loss

costs at various levels of coverage for the specific perils of earthquakes, hurricanes, tsunamis, and volcanic eruptions for—

“(A) insured residential property exposures; and

“(B) where practical, insured business property exposures.

“(2) FACTORS TO CONSIDER IN DEVELOPING LOSS COSTS.—

In estimating catastrophe loss costs under this subsection, the Commission, at a minimum, shall—

“(A) take into account hazard mitigation measures in place which are intended to reduce losses from natural disasters; and

“(B) seek input from the advisory committee described in subsection (d).

“(3) FILE LOSS COSTS.—Within 12 months of enactment of the Natural Disaster Protection Partnership Act of 1996 and two every years thereafter, the Commission shall file the catastrophe loss cost estimates developed under this subsection for the perils described in paragraph (1) with—

“(A) each State department of insurance; and

“(B) the Secretary.

“(d) ADVISORY COMMITTEE.—

“(1) ESTABLISHMENT.—The Commission shall establish an advisory committee of experts to assist in the development of natural disaster catastrophe loss costs.

“(2) MEMBERSHIP.—The advisory committee established in paragraph (1) shall consist of representatives from the following:

“(A) The property and casualty industry.

“(B) Natural disaster catastrophe modeling organizations.

“(C) Consumers of property and casualty insurance.

“(D) Federal government scientific agencies, such as the United States Geological Survey, the National Oceanic and Atmospheric Administration, the National Hurricane Center, the Bureau of the Census, and the National Academy of Sciences.

“(E) Other appropriate experts in the area of natural disaster catastrophe loss costs.

“(e) USE OF CATASTROPHE LOSS COSTS.—

“(1) PRIVATE INSURERS.—

“(A) ELECTION.—Private insurers may elect to cite the catastrophe loss costs estimates filed with the State insurance departments under subsection (c)(3) in rate filings to the State

insurance departments for the natural disaster perils listed in subsection (c)(1).

“(B) PRESUMPTIVE APPROVAL.—The portion of the filing submitted under subparagraph (A) by private insurers to the State insurance departments based on loss costs estimates filed by the Commission shall be presumptively approved and shall not be subject to separate approval by State insurance departments.

“(C) STATE APPROVAL.—State insurance departments shall retain authority for approval of—

“(i) the portion of the rate not based on loss costs for those insurers electing to cite the catastrophe loss cost estimates under subparagraph (A); and

“(ii) the rates for natural disaster perils described in subsection (c)(1) proposed by private insurers who elect not to cite the catastrophe loss cost estimates under subparagraph (A).

“(2) TREASURY DEPARTMENT.— The Treasury Department shall rely, where relevant, on the catastrophe loss costs estimates filed with the Secretary under subsection (c)(1) in developing the reserve prices for the catastrophic excess-of-loss contracts described in section 902.

“(3) STATE INSURANCE POOLS.—In order to be eligible to purchase the catastrophic excess-of-loss contracts described in section 902 directly from the Treasury Department or through the private corporation described in section 903, State insurance pools shall rely, where relevant, on the catastrophe loss costs estimates filed with the State insurance departments under subsection (c)(1) in developing the rates for any property insurance coverage they provide.

“(4) PRIVATE CORPORATION.—The private corporation described in section 903 shall rely on the catastrophe loss costs estimates filed with the State insurance departments under subsection (c)(1) in developing rates for the reinsurance coverage it provides.

“(f) APPEAL.—

“(1) APPEAL RIGHT.—Once the catastrophe loss costs estimates have been filed with the State insurance departments under subsection (c)(3), any individual, organization, private insurer, State insurance pool, or State regulatory authority adversely affected or aggrieved by such estimates may bring an appeal in writing to the Commission.

“(2) APPEAL PROCESS.—Any appeal described in paragraph (1) shall be heard in a public proceeding by the Commission within 60 days of

receiving such appeal. The Commission shall review the appeal and make a finding according to the standard described in paragraph (4).

“(3) AUTHORIZATION TO MAKE CHANGES.—If the appeal described in paragraph (1) is found to be meritorious based on the standard in paragraph (4), the Commission shall make changes to the challenged catastrophe loss costs estimates to address the concerns raised in the appeal.

“(4) STANDARD OF REVIEW.—The Commission shall find an appeal brought under this subsection to be meritorious if the catastrophe loss costs estimates being challenged are materially inconsistent with the following actuarial principles of basing rates on the risk to insured property from natural disaster perils:

“(A) Minimizing cost-subsidization of the loss costs between geographic risk territories and different construction types for building.

“(B) Ensuring that the expected loss costs are sufficient to cover expected losses.

“(5) JUDICIAL REVIEW.—Once the parties described in paragraph (1) have exhausted their appeal rights to the Commission as described in this subsection, such parties may seek judicial review in the district court of

the United States with jurisdiction over the action. The scope of review shall be in accordance with chapter 7 of title 5, United State Code.

“(g) OPERATING COSTS.—Any costs incurred by the Commission in carrying out its responsibility under this section, including compensation for its members and staff and necessary and ordinary related expenses, including those of the advisory committee described in subsection (d), shall be paid by a surcharge assessed by the Secretary on the catastrophic excess-of-loss contracts described in section 902.

“(h) INTENT.—The provisions of this section relate specifically to the business of insurance. Except for subsection (e)(1)(B), all activities prescribed by this section applicable to the business of insurance shall be regulated by State law.

“SEC. 902. CATASTROPHIC EXCESS-OF-LOSS CONTRACTS.

[This section will be provided by the Clinton Administration.]

“SEC. 903. PRIVATE DISASTER INSURANCE CORPORATION.

[The provision has not yet been defined. One approach is a “placeholder” provision that would acknowledge the possible existence of a private corporation that would provide reinsurance coverage to private insurers and State insurance pools at levels above which are now available in the private market. The corporation recognized must have been created by private insurers, must be operated privately, and must have no direct or implied

Federal government connection or backing. This section could confer two legislative protections on such a private corporation: (1) favorable tax-treatment of the corporation's reserves to allow for their rapid accumulation; and (2) an anti-trust exemption for setting of rates.]

"SEC. 904. STUDY ON TAX TREATMENT OF INSURER

CATASTROPHIC RESERVES.

"(a) GAO STUDY.—The Comptroller General of the United States shall evaluate the public policy issues described in subsection (b) associated with conferring favorable Federal tax treatment to insurance reserves set aside by private insurers for future catastrophic natural disasters.

"(b) FACTORS TO BE STUDIED.—The study described in subsection (a) shall evaluate the likelihood and magnitude of the following public policy objectives:

"(1) The increase capacity and availability of natural disaster insurance in the private marketplace.

"(2) The enhanced affordability of natural disaster insurance.

"(3) The ability of private insurers to continue providing property coverages following catastrophic natural disasters.

"(4) The overall benefit to the United States and worldwide economy.

“(5) The short and long-term loss of tax revenues provided to the United States Treasury.

“(c) CONSULTATION—The Comptroller General shall consult with recognized experts in preparing the study described in subsection (a). The experts shall include representatives from State insurance departments, private insurers, insurance agents, economists, natural disaster risk modeling experts, consumers of property and casualty insurance, and other experts deemed relevant by the Comptroller General.

“(d) COMPLETION OF STUDY.—The results of the study described in subsection (a), including any recommendations, shall be transmitted to the Secretary and the Congress within 12 months of the date of enactment of the Natural Disaster Protection Partnership Act of 1996.

“SEC. 905. FLOOD INSURANCE.

“(a) STUDY.—The Director shall enter into an arrangement with the National Academy of Sciences to conduct a study on the operation of the national flood insurance program managed by the Director pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.). The study shall evaluate and provide specific recommendations on—

“(1) necessary and appropriate measures, including additional sanctions, to increase the purchase of Federal flood insurance; and

“(2) the advisability and feasibility of privatizing the entire national flood insurance program managed by the Director.

“(b) NATIONAL ACADEMY OF SCIENCES.—The study described in subsection (a) shall be performed by a panel recognized experts appointed by the National Academy of Sciences. The experts shall include representatives of building constructors, real estate interests, lending institutions, private insurers, the model building code organizations, local government zoning and land use planning bodies, and other experts deemed relevant by the National Academy of Sciences.

“(c) COMPLETION OF STUDY.—The results of the study described in subsection (a), with any recommendations on increasing the purchase of flood insurance and privatization, shall be transmitted by the National Academy of Sciences to the Director and Congress within 18 months of the date of enactment of the Natural Disaster Protection Partnership Act of 1996.

“SEC. 906. INSURANCE PRICING INCENTIVES.

“Each State insurance regulator shall take into account natural disaster hazard mitigation measures, such as compliance with the building and safety codes and performance standards described in section 801, in setting rates and deductibles for property insurance provided in that State.

“SEC. 907. EVALUATION.

“(a) STUDY—The Secretary shall enter into an arrangement with the National Academy of Sciences to evaluate the natural disaster insurance provisions authorized under this title. The evaluation shall—

“(1) assess the extent to which the societal objectives of enhancing the availability and affordable of private natural disaster insurance and reducing Federal disaster assistance have been accomplished;

“(2) identify additions, deletions, or changes to the insurance provisions authorized by this title which would better achieve the societal objectives described in paragraph (1); and

“(3) recommend any further evaluation.

“(b) NATIONAL ACADEMY OF SCIENCES.—The study described in subsection (a) shall be performed by a panel of recognized experts appointed by the National Academy of Sciences. The experts shall include experts on natural disaster insurance, including private insurers, insurance agents and brokers, consumers of property and casualty insurance, State and local community officials, and other experts deemed relevant by the National Academy of Sciences.

“(c) COMPLETION OF STUDY.—The results of the study described in subsection (a), including any recommendations, shall be transmitted by the

National Academy of Sciences to the Secretary and to Congress within 5 years of the date of enactment of the Natural Disaster Protection Partnership Act of 1996.”.

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1 SEC. ____ REQUIREMENT OF EXHAUSTION OF ADMINISTRA-
2 TIVE REMEDIES BEFORE BRINGING ACTION
3 IN FEDERAL COURT.

4 (a) IN GENERAL.—Section 1902 of the Social Secu-
5 rity Act, as amended by ..., is further amended by adding
6 at the end the following new subsection:

7 “(z)(1) Except as provided in this subsection, no ben-
8 eficiary or provider may bring an action against a State *Officials*
9 in Federal court arising from this title unless the bene-
10 ficiary or provider has exhausted an administrative proc-
11 ess established by the State consistent with paragraph (4).
12 [By accepting funding under this title, a State is consid-
13 ered to have consented to be sued in Federal court consist-
14 ent with this subsection and to have permitted actions
15 (against State officials to compel compliance with the re-
16 quirements of this title.)]

17 “(2) Paragraph (1) shall not apply to an action
18 brought—

19 “(A) for the enforcement of rights of individ-
20 uals under subsection (a)(10)(D) (relating to quali-
21 fied medicare beneficiaries) and section 1905(p) (re-
22 lating to medicare cost-sharing);

23 “(B) for the enforcement of section 1919 (relat-
24 ing to nursing home standards);

25 “(C) for the enforcement of section 1927 (relat-
26 ing to prevention of spousal impoverishment);

1 “(D) [additional items may be added]

2 “(3) Paragraph (1) shall not apply to an action
3 brought in a case in which—

4 “(A) a delay in provision of services during the
5 period of the administrative process [may]/[is likely
6 to] result in severe and long-lasting impairment to
7 the health of an individual;

8 “(B) the responsible officer in the administra-
9 tive process lacks authority to provide for the relief
10 requested; and

*Remedy
inadequate*

11 “(C) compliance with the exhaustion require-
12 ment of such paragraph would be futile.

13 “(4) An administrative process is consistent with this
14 section only if—

15 “(A) it provides for fair hearings consistent
16 with the requirements of section 1902(a)(4), and

17 “(B) it does not restrict the rights of bene-
18 ficiaries to such a hearing because they are enrolled
19 with capitated organizations under section 1903(m).

20 Subparagraph (B) shall not be construed as preventing
21 a State from providing for a fair hearing through such
22 a capitated organization so long as such hearing meets
23 the otherwise applicable requirements of this title.”

24 (b) EFFECTIVE DATE.—[to be provided]

SENT-BY:

1- 2-96 : 10:11 : OGC IMMEDIATE OFFICE-

84862878:# 2/ 3

To : Robert Jaye@OC.C.HCF@OS.DC
Cc :
Bcc :
From : Nan Hunter@OGC.IO@OS.DC
Subject : medicaid & private right of action
Date : Tuesday, April 2, 1996 at 9:55:34 am EST
Attach :
Certify : Y
Encrypt : N

white house counsel's office is analyzing the impact of the new seminole indians case. you should take a look at it also. meanwhile, two questions from them:

1. is there a private right to sue stated in the statutory text of medicaid, or did it result from judicial interpretation? if the latter, do you know the case?
2. which is the statutory provision that establishes state participation as voluntary, with conditions attached if a state elects to opt in?

thanks.

Willen

Provider can bring action under 1983 for real rates of reimbursement against state officials for injunctive relief.

Remain good law -

or enact of an ent scheme provided in statute to ~~state~~ ^{by} even this kind of action in.

Any need for action apt state itself

e.g. by beneficiaries? for damages?
what of those?

any diff be this is a grant program?

same for beneficiaries?

To : Nan Hunter@OGC.IO@OS.DC

Cc :
 Bcc :
 From : Robert Jaye@OGC.HCF@OS.DC
 Subject : re: medicaid private right of action
 Date : Tuesday, April 2, 1996 at 10:09:37 am EST
 Attach :
 Certify : N
 Encrypt : N

I've given this assignment to Dan Aibel. My preliminary responses to your specific questions are that there is no specific right of private action mentioned in the medicaid statute, but it just grew up in the AFDC context and was largely unquestioned. You can get some of the flavor of that in the Medicaid context from the section 1983 memo I sent you during one of the furloughs.

Similarly, there is nothing specific that states that participation in medicaid by a State is voluntary. That also grew up in the AFDC context. It was definitely mentioned in *Rosado v. Wyman* and may have also been mentioned in *King v. Smith*. Most Medicaid cases involving alleged states noncompliance with some aspect of medicaid mention it. Legally, it may be based on the notion that Medicaid and AFDC are grant programs and no one is required to accept a grant, but if they do so, they are obligated to adhere to the terms of the grant. Further (and perhaps more accurate) details to follow from Dan in about a week.