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106TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 106–526

HOMEOWNERS' INSURANCE AVAILABILITY ACT OF 2000

MARCH 15, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LEACH, from the Committee on Banking and Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 21]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 21) to establish a Federal program to provide reinsurance for State disaster insurance programs, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Homeowners' Insurance Availability Act of 2000".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Congressional findings.
Sec. 3. Program authority.
Sec. 4. Qualified lines of coverage.
Sec. 5. Covered perils.
Sec. 6. Contracts for reinsurance coverage for eligible State programs.
Sec. 7. Auction of contracts for reinsurance coverage.
Sec. 8. Anti-redlining requirement.
Sec. 9. Minimum level of retained losses and maximum Federal liability.
Sec. 10. Disaster Reinsurance Fund.
Sec. 11. National Commission on Catastrophe Risks and Insurance Loss Costs.
Sec. 12. Definitions.
Sec. 13. Regulations.
Sec. 14. Termination.
Sec. 15. Annual study of cost and availability of disaster insurance and program need.
Sec. 16. GAO study of hurricane related flooding.

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SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the rising costs resulting from natural disasters have placed a strain on homeowners' insurance markets in many areas, jeopardizing the ability of many consumers to adequately insure their homes and possessions;

(2) the lack of sufficient insurance capacity threatens to increase the number of uninsured homeowners, which, in turn, increases the risk of mortgage defaults and the strain on the Nation's banking system;

(3) some States have intervened to ensure the continued availability of homeowners' insurance for all residents;

(4) it is appropriate that efforts to improve insurance availability be designed and implemented at the State level;

(5) while State insurance programs may be adequate to cover losses from most natural disasters, a small percentage of events are likely to exceed the financial capacity of these programs and the local insurance markets;

(6) limited Federal reinsurance will improve the effectiveness of State insurance programs and private insurance markets and will increase the likelihood that homeowners' insurance claims will be fully paid in the event of a large natural catastrophe;

(7) it is necessary to provide, on a temporary basis, a Federal reinsurance program that will promote stability in the homeowners' insurance market in the short term and encourage the growth of reinsurance capacity by the private and capital markets as soon as practicable;

(8) such a Federal reinsurance program should not remain in existence longer than necessary for the private entities or the capital markets, or both, to provide adequate reinsurance capacity to address the current homeowners' insurance market dislocations caused by various disasters; and

(9) any Federal reinsurance program must be founded upon sound actuarial principles and priced in a manner that minimizes the potential impact on the Treasury.

SEC. 3. PROGRAM AUTHORITY.

(a) IN GENERAL.—The Secretary of the Treasury shall carry out a program under this Act to make reinsurance coverage available through—

(1) contracts for reinsurance coverage under section 6, which shall be made available for purchase only by eligible State programs; and

(2) contracts for reinsurance coverage under section 7, which shall be made available for purchase by purchasers under section 7(a)(1) only through auctions under section 7(a).

(b) PURPOSE.—The program shall be designed to make reinsurance coverage under this Act available to improve the availability of homeowners' insurance for the purpose of facilitating the pooling, and spreading the risk, of catastrophic financial losses from natural disasters and to improve the solvency of homeowners' insurance markets.

(c) CONTRACT PRINCIPLES.—Under the program under this Act, the Secretary shall offer reinsurance coverage through contracts with covered purchasers, which contracts—

(1) shall not displace or compete with the private insurance or reinsurance markets or capital markets;

(2) shall minimize the administrative costs of the Federal Government;

(3) shall, in the case of any contract under section 6 for an eligible State program, provide coverage based solely on insured losses within the State of the eligible State program purchasing the contract; and

(4) shall, in the case of any contract under section 7 for purchase at auction, provide coverage based solely on insured losses within the region established pursuant to section 7(a) for which the auction is held.

SEC. 4. QUALIFIED LINES OF COVERAGE.

Each contract for reinsurance coverage made available under this Act shall provide insurance coverage against residential property losses to homes (including dwellings owned under condominium and cooperative ownership arrangements) and the contents of apartment buildings.

SEC. 5. COVERED PERILS.

Each contract for reinsurance coverage made available under this Act shall cover losses that are—

(1) proximately caused by—

(A) earthquakes;

(B) perils ensuing from earthquakes, including fire and tsunamis;

(C) tropical cyclones having maximum sustained winds of at least 74 miles per hour, including hurricanes and typhoons;

(D) tornadoes; or

(E) volcanic eruptions; and

(2) in the case only of a contract under section 6, insured or reinsured by the eligible State program purchasing the contract.

The Secretary shall, by regulation, define the natural disaster perils under paragraph (1).

SEC. 6. CONTRACTS FOR REINSURANCE COVERAGE FOR ELIGIBLE STATE PROGRAMS.

(a) ELIGIBLE STATE PROGRAMS.—A program shall be eligible to purchase a contract under this section for reinsurance coverage under this Act only if the State entity authorized to make such determinations certifies to the Secretary that the program is a State-operated program that complies with the following requirements:

(1) PROGRAM DESIGN.—The program shall be a State-operated—

(A) insurance program that—

(i) offers coverage for homes (which may include dwellings owned under condominium and cooperative ownership arrangements) and the contents of apartments to State residents because of a finding by the State insurance commissioner or other State entity authorized to make such determination that such a program is necessary in order to provide for the continued availability of such residential coverage for all residents; and

(ii) is authorized by State law; or

(B) reinsurance program that is designed to improve private insurance markets that offer coverage for homes (which may include dwellings owned under condominium and cooperative ownership arrangements) and the contents of apartments because of a finding by the State insurance commissioner or other State entity authorized to make such determination that such a program is necessary in order to provide for the continued availability of such residential coverage for all residents.

(2) OPERATION.—The program shall meet the following requirements:

(A) A majority of the members of the governing body of the program shall be public officials.

(B) The State shall have a financial interest in the program, which shall not include a program authorized by State law or regulation that requires insurers to pool resources to provide property insurance coverage for covered perils.

(3) TAX STATUS.—The program shall be structured and carried out in a manner so that the program is exempt from all Federal taxation.

(4) COVERAGE.—The program shall cover only a single peril.

(5) EARNINGS.—The program may not provide for, nor shall have ever made, any redistribution of any part of any net profits of the program to any insurer that participates in the program.

(6) MITIGATION.—

(A) IN GENERAL.—The program shall include mitigation provisions that require that not less than 10 percent of the net investment income of the State insurance or reinsurance program be used for programs to mitigate losses from natural disasters for which the State insurance or reinsurance program was established. For purposes of this paragraph, mitigation shall include methods to reduce losses of life and property.

(B) EXCEPTION.—Notwithstanding subparagraph (A), in the case of any State for which the Secretary has determined, pursuant to a request by the State insurance commissioner, that the 10 percent requirement under subparagraph (A) will jeopardize the actuarial soundness of the State program, subparagraph (A) shall be applied by substituting "5 percent" for "10 percent".

(7) REQUIREMENTS REGARDING COVERAGE.—

(A) IN GENERAL.—The program—

(i) may not involve cross-subsidization between any separate property and casualty lines covered under the program unless the elimination of such activity in an existing program would negatively impact the eligibility of the program to purchase a contract for reinsurance coverage under this Act pursuant to paragraph (3);

(ii) shall include provisions that authorize the State insurance commissioner or other State entity authorized to make such a determination to terminate the program if the insurance commissioner or other such entity determines that the program is no longer necessary to en-

sure the availability of homeowners' insurance for all State residents; and

(iii) shall provide that, for any insurance coverage for homes (which may include dwellings owned under condominium and cooperative ownership arrangements) and the contents of apartments that is made available under the State insurance program and for any reinsurance coverage for such insurance coverage made available under the State reinsurance program, the premium rates charged shall be amounts that, at a minimum, are sufficient to cover the full actuarial costs of such coverage, based on consideration of the risks involved and accepted actuarial and rate making principles, anticipated administrative expenses, and loss and loss-adjustment expenses.

(B) APPLICABILITY.—This paragraph shall apply—

(i) before the expiration of the 2-year period beginning on the date of the enactment of this Act, only to State programs which, after January 1, 1999, commence offering insurance or reinsurance coverage described in subparagraph (A) or (B), respectively, of paragraph (1); and

(ii) after the expiration of such period, to all State programs.

(8) OTHER QUALIFICATIONS.—

(A) IN GENERAL.—The State program shall (for the year for which the coverage is in effect) comply with regulations that shall be issued under this paragraph by the Secretary, in consultation with the National Commission on Catastrophe Risks and Insurance Loss Costs established under section 11. The regulations shall establish criteria for State programs to qualify to purchase reinsurance under this section, which are in addition to the requirements under the other paragraphs of this subsection.

(B) CONTENTS.—The regulations issued under this paragraph shall include requirements that—

(i) the State program have public members on its board of directors or have an advisory board with public members;

(ii) insurance or reinsurance coverage, as applicable, made available through the State program not supplant coverage that is otherwise reasonably available and affordable in the private market;

(iii) the State program provide adequate insurance or reinsurance protection, as applicable, for the peril covered, which shall include a range of deductibles and premium costs that reflect the applicable risk to eligible properties;

(iv) insurance or reinsurance coverage, as applicable, provided by the State program is made available on a nondiscriminatory basis to all qualifying residents;

(v) any new construction, substantial rehabilitation, and renovation insured or reinsured by the program complies with applicable State or local government building, fire, and safety codes;

(vi) the State, or appropriate local governments within the State, have in effect and enforce nationally recognized model building, fire, and safety codes and consensus-based standards that offer disaster resistance that is substantially equivalent or greater than the resistance under any requirements for floods, earthquakes, or wind resistance issued by the Federal Emergency Management Agency;

(vii) the State has taken actions to establish an insurance rate structure that takes into account measures to mitigate insurance losses;

(viii) there are in effect, in such State, laws or regulations sufficient to prohibit price gouging, during the term of reinsurance coverage under this Act for the State program, in any disaster area located within the State; and

(ix) the State program complies with such other requirements that the Secretary considers necessary to carry out the purposes of this Act.

(b) TERMS OF CONTRACTS.—Each contract under this section for reinsurance coverage under this Act shall be subject to the following terms and conditions:

(1) MATURITY.—The term of the contract shall not exceed 1 year or such other term as the Secretary may determine.

(2) PAYMENT CONDITION.—The contract shall authorize claims payments for eligible losses only to the eligible State program purchasing the coverage.

(3) RETAINED LOSSES REQUIREMENT.—For each event of a covered peril, the contract shall make a payment for the event only if the total amount of insurance claims for losses, which are covered by qualified lines, occur to properties located within the State covered by the contract, and result from the event, ex-

ceeds the amount of retained losses provided under the contract (pursuant to section 9(a)) purchased by the eligible State program.

(4) MULTIPLE EVENTS.—The contract shall cover any eligible losses from one or more covered events that may occur during the term of the contract and shall provide that if multiple events occur, the retained losses requirement under paragraph (3) shall apply to each event.

(5) TIMING OF ELIGIBLE LOSSES.—Eligible losses under the contract shall include only insurance claims for property covered by qualified lines that are reported to the eligible State program within the 3-year period beginning upon the event or events for which payment under the contract is provided.

(6) PRICING.—

(A) DETERMINATION.—The price of reinsurance coverage under the contract shall be an amount established by the Secretary as follows:

(i) RECOMMENDATIONS.—The Secretary shall take into consideration the recommendations of the Commission in establishing the price, but the price may not be less than the amount recommended by the Commission.

(ii) FAIRNESS TO TAXPAYERS.—The price shall be established at a level that is designed to return to the Federal Government fair compensation for the risks and costs being borne by the people of the United States and that takes into consideration the developmental stage of empirical models of natural disasters and the capacity of private markets to absorb insured losses from natural disasters.

(iii) SELF-SUFFICIENCY.—The rates for reinsurance coverage shall be established at a level that annually produces expected premiums which shall be sufficient to pay the expected annualized cost of all claims, loss adjustment expenses, and all administrative costs of reinsurance coverage offered under this section.

(B) COMPONENTS.—The price shall consist of the following components:

(i) RISK-BASED PRICE.—A risk-based price, which shall reflect the anticipated annualized payout of the contract according to the actuarial analysis and recommendations of the Commission.

(ii) RISK LOAD.—A risk load in an amount that is not less than the risk-based price under clause (i). In establishing risk loads under this clause, the Secretary shall take into consideration comparable private risk loads.

(iii) ADMINISTRATIVE COSTS.—A sum sufficient to provide for the operation of the Commission and the administrative expenses incurred by the Secretary in carrying out this Act.

(7) INFORMATION.—The contract shall contain a condition providing that the Commission may require the State program that is covered under the contract to submit to the Commission all information on the State program relevant to the duties of the Commission, as determined by the Secretary.

(8) ADDITIONAL CONTRACT OPTION.—The contract shall provide that the purchaser of the contract may, during the term of such original contract, purchase additional contracts from among those offered by the Secretary at the beginning of the term, subject to the limitations under section 9, at the prices at which such contracts were offered at the beginning of the term, prorated based upon the remaining term as determined by the Secretary. Such additional contracts shall provide coverage beginning on a date 15 days after the date of purchase but shall not provide coverage for losses for an event that has already occurred.

(9) OTHERS.—The contract shall contain such other terms as the Secretary considers necessary to carry out this Act and to ensure the long-term financial integrity of the program under this Act.

(c) PRIVATE SECTOR RIGHT TO PARTICIPATE.—

(1) ESTABLISHMENT OF COMPETITIVE PROCEDURE.—The Secretary shall establish, by regulation, a competitive procedure under this subsection that provides qualified entities an opportunity, on a basis consistent with the contract cycle established under this Act by the Secretary, to offer to provide, in lieu of reinsurance coverage under this section, reinsurance coverage that is substantially similar to coverage otherwise made available under this section.

(2) COMPETITIVE PROCEDURE.—Under the procedure established under this subsection—

(A) the Secretary shall establish criteria for private insurers, reinsurers, and capital market companies, and consortia of such entities to be treated as qualified entities for purposes of this subsection, which criteria shall require such an entity to have at all times capital sufficient to satisfy the

terms of the reinsurance contracts and shall include such other industry and credit rating standards as the Secretary considers appropriate;

(B) not less than 30 days before the beginning of each contract cycle during which any reinsurance coverage under this section is to be made available, the Secretary may request proposals and shall publish in the Federal Register the rates and terms for contracts for reinsurance coverage under this section that are to be made available during such contract cycle;

(C) the Secretary shall provide qualified entities a period of not less than 10 days (which shall terminate not less than 20 days before the beginning of the contract cycle) to submit to the Secretary a written expression of interest in providing reinsurance coverage in lieu of the coverage otherwise to be made available under this section;

(D) the Secretary shall provide any qualified entity submitting an expression of interest during the period referred to in subparagraph (C) a period of not less than 20 days (which shall terminate before the beginning of the contract cycle) to submit to the Secretary an offer to provide, in lieu of the reinsurance coverage otherwise to be made available under this section, coverage that is substantially similar to such coverage;

(E) if the Secretary determines that an offer submitted during the period referred to in subparagraph (D) is a bona fide offer to provide reinsurance coverage during the contract cycle at rates and terms that are substantially similar to the rates and terms for reinsurance coverage otherwise to be provided under this section by the Secretary, the Secretary shall accept the offer (if still outstanding) and, notwithstanding any other provision of this Act, provide for such entity to make reinsurance coverage available in accordance with the offer; and

(F) if the Secretary accepts an offer pursuant to subparagraph (E) to make reinsurance coverage available, notwithstanding any other provision of this Act, the Secretary shall reduce, to an equivalent extent, the amount of reinsurance coverage available under this section during the contract cycle to which the offer relates, unless and until the Secretary determines that the entity is not complying with the terms of the accepted offer.

SEC. 7. AUCTION OF CONTRACTS FOR REINSURANCE COVERAGE.

(a) AUCTION PROGRAM REQUIREMENTS.—The Secretary shall carry out a program to auction contracts for reinsurance coverage under this Act made available pursuant to section 3(a)(2), which shall comply with the following requirements:

(1) PURCHASERS.—The auction program shall provide for auctioning all contracts made available under this section to private insurers and reinsurers, State insurance and reinsurance programs, and other interested entities.

(2) REGIONAL AUCTIONS.—The auction program shall provide for auctions on a regional basis. The Secretary shall divide the States into not less than 6 regions for the purpose of holding such regional auctions, which shall include separate regions for all or part of the State of California and all or part of the State of Florida. In determining the boundaries for such regions, the Secretary shall consider which areas have greater risks of losses from covered perils and which areas have lesser risks of losses from covered perils, and shall attempt not to combine those different types of areas. Auctions for each region shall be conducted not less often than annually.

(3) RESERVE PRICE.—In auctioning contracts under this section for reinsurance coverage, the Secretary shall set, for each contract, a reserve price that is the minimum price at which the contract may be sold, based upon the recommendations of the Commission. The reserve price shall be determined on the basis of the following components:

(A) RISK-BASED PRICE.—A risk-based price, which shall reflect the anticipated annualized payout of the contract according to the actuarial analysis and recommendations of the Commission.

(B) RISK LOAD.—A risk load in an amount that is not less than the risk-based price under subparagraph (A).

(C) ADMINISTRATIVE COSTS.—A sum sufficient to provide for the operation of the Commission and the administrative expenses incurred by the Secretary in carrying out this section.

(D) MITIGATION.—An adjustment based on an actuarial analysis that takes into account any efforts that are being made to reduce losses to property in the region in which the contract is being sold.

(4) PRICE GOUGING PROTECTIONS.—The auction program may provide reinsurance coverage for losses incurred only for property located in a State for which the State entity authorized to make such determinations has certified to the

Secretary that there are in effect, in such State, laws or regulations sufficient to prohibit price gouging, during the term of such reinsurance coverage, in any disaster area located within the State.

(5) MITIGATION REQUIREMENTS.—

(A) IN GENERAL.—The auction program shall require each purchaser of a contract that is not an eligible State program, as a condition of such purchase, to contribute an amount, that the Secretary (in consultation with the Director of the Federal Emergency Management Agency) shall establish and which shall not exceed 5 percent of the price paid for the contract, to communities that—

(i) are located in the State in which the reinsurance coverage under the contract is provided (or in the case of multiple States, among such States, as determined by the Secretary);

(ii) are designated by the Director of the Federal Emergency Management Agency and the appropriate emergency management agency for the State as Project Impact communities (for purposes of the pre-disaster mitigation program of such Agency); and

(iii) are participating in such programs or initiatives as the Secretary may require that provide incentives for construction of structures and communities that are resistant to damage from covered perils, which shall include the Building Code Effectiveness Grading Schedule of the Insurance Services Office.

(B) USE OF CONTRIBUTIONS.—Amounts contributed to communities pursuant to the requirement under subparagraph (A) shall be used only—

(i) for activities to reduce losses from covered perils to properties covered under the reinsurance contract purchased under the auction program that are located in such communities; and

(ii) in accordance with such requirements as the Secretary, in consultation with the Director of the Federal Emergency Management Agency and appropriate State agencies, shall establish to ensure cost-effective use of such amounts.

(C) ALLOCATION.—The Secretary, in consultation with the Director of the Federal Emergency Management Agency, shall establish requirements for allocation of contributions among communities eligible under subparagraph (A) to receive such contributions.

(6) OTHER REQUIREMENTS.—The Secretary may establish such other requirements for the auction program as the Secretary considers necessary to carry out this Act.

(b) CONTRACT TERMS AND CONDITIONS.—Each contract for reinsurance coverage auctioned under the program under this section shall include the following terms and conditions:

(1) MATURITY.—The term of each such contract shall not exceed 1 year or such other term as the Secretary may determine.

(2) TRANSFERABILITY.—The contract shall at all times be fully transferable, assignable, and divisible.

(3) THRESHOLD OF COVERAGE.—The contract shall provide that the covered purchaser may receive a payment for losses covered under the contract if, under a process specified in the contract, the Secretary determines that the insurance industry will, as a result of a single event of a covered peril, incur losses within the coverage area for the region established under subsection (a)(2) for which the contract was auctioned that are covered by one or more lines of insurance under section 5 in an aggregate amount, for such event, greater than the level of retained losses specified in section 9.

(4) MULTIPLE EVENTS.—The contract shall contain the provisions described in section 6(b)(4).

(5) ADDITIONAL CONTRACT OPTION.—The contract shall contain the provisions described in section 6(b)(8).

(6) SUBMISSION OF INFORMATION.—The contract shall include terms that—

(A) require the purchaser to notify the Secretary of any sale, transfer, assignment, or division of the contract or any interest in the contract, identify the interest involved, and identify the price paid or compensation provided; and

(B) authorize the disclosures required under subsection (c)(2).

(7) OTHERS.—The contract shall contain such other terms as the Secretary considers necessary to carry out this Act and to ensure the long-term financial integrity of the program under this Act.

(c) GAO AUDIT.—

(1) IN GENERAL.—For each fiscal year, the Comptroller General of the United States shall conduct an audit of prices for contracts made available under the auction program under this section during such fiscal year that determines—

(A) the reserve prices established for such contracts;

(B) the prices paid for such contracts that are purchased;

(C) the prices paid, or compensation provided, in any sales, transfers, assignments, or divisions of any such contracts (or any interests in such contracts) in the secondary market or to any third party; and

(D) pursuant to the information obtained under subparagraphs (A) through (C), the appropriate reserve prices for such contracts that are to be made available in the succeeding fiscal year.

(2) USE OF INFORMATION.—The Secretary shall provide any information referred to in subsection (b)(6) that is obtained by the Secretary to the Comptroller General, the Director of the Congressional Budget Office, and the Director of the Office of Management and Budget, and shall make such information publicly available. The Secretary, the Director of the Congressional Budget Office, the Director of the Office of Management and Budget shall each take such information into consideration in preparing any budget, report, estimate, or recommendation to the extent it relates to the auction program under this section, and in any determinations relating to the Budget of the United States or the concurrent resolution on the budget (as such term is defined in section 3 of the Congressional Budget Act of 1974). The Secretary shall take such information into consideration in establishing reserve prices for contracts made available under this section.

SEC. 8. ANTI-REDLINING REQUIREMENT.

Notwithstanding sections 6(a) and 7(a), the Secretary may not make a contract for reinsurance coverage under this Act available for purchase unless the purchaser certifies to the Secretary—

(1) in the case of a contract under section 6, that—

(A) no insurer (or affiliate of such insurer) participating in the State-operated program of such purchaser has been adjudicated in any Federal court, or has entered, after the date of the enactment of this Act, into a consent decree filed in a Federal court or into a settlement agreement, premised upon a violation of the Fair Housing Act for the activities involved in making insurance coverage available; and

(B) if such insurer (or affiliate) has entered into any such consent decree or settlement agreement, the insurer (or affiliate) is not in violation of the decree or settlement agreement as determined by a court of competent jurisdiction or the agency with which the decree or agreement was entered into; and

(2) in the case of a contract under section 7, that—

(A)(i) in the case of a contract purchased by an insurer or reinsurer, the insurer or reinsurer (or affiliate of such insurer or reinsurer) has not been adjudicated in any Federal court, and has not entered, after the date of the enactment of this Act, into a consent decree filed in a Federal court or into a settlement agreement, premised upon a violation of the Fair Housing Act for the activities involved in making insurance coverage available; or

(ii) in the case of a contract purchased by a State program, no insurer (or affiliate of such insurer) participating in the State program has been adjudicated in any Federal court, or has entered, after the date of the enactment of this Act, into a consent decree filed in a Federal court or into a settlement agreement, premised upon a violation of the Fair Housing Act for the activities involved in making insurance coverage available; and

(B) if such an insurer or reinsurer (or affiliate of such an insurer or reinsurer) has entered into any such consent decree or settlement agreement, the insurer or reinsurer (or affiliate) is not in violation of the decree or settlement agreement as determined by a court of competent jurisdiction or the agency with which the decree or agreement was entered into.

SEC. 9. MINIMUM LEVEL OF RETAINED LOSSES AND MAXIMUM FEDERAL LIABILITY.

(a) AVAILABLE LEVELS OF RETAINED LOSSES.—In making reinsurance coverage available under this Act, the Secretary shall make available for purchase contracts for such coverage that require the sustainment of retained losses from a single event of a covered peril (as required under sections 6(b)(3) and 7(b)(3) for payment of eligible losses) in various amounts, as the Secretary, in consultation with the Commission, determines appropriate and subject to the requirements under subsection (b).

(b) MINIMUM LEVEL OF RETAINED LOSSES.—

(1) CONTRACTS FOR STATE PROGRAMS.—Subject to paragraphs (3) and (4) and notwithstanding any other provision of this Act, a contract for reinsurance coverage under section 6 for an eligible State program that offers insurance or reinsurance coverage described in subparagraph (A) or (B), respectively, of section 6(a)(1) may not be made available or sold unless the contract requires retained losses from a single event of a covered peril in the following amount:

(A) IN GENERAL.—The State program shall sustain an amount of retained losses of not less than the greater of—

(i) an amount between $2,000,000,000 and $5,000,000,000, that is determined by the Secretary in accordance with the requirement under section 3(c)(1);

(ii) the claims-paying capacity of the eligible State program, as determined by the Secretary; and

(iii) an amount, determined by the Secretary in consultation with the Commission, that is in the range between the amount equal to the eligible loss projected to be incurred once every 100 years from a single event in the State and the amount equal to the eligible loss projected to be incurred once every 250 years from such an event.

(B) TRANSITION RULE FOR EXISTING PROGRAMS.—

(i) CLAIMS-PAYING CAPACITY.—Subject to clause (ii), in the case of any eligible State program that was offering insurance or reinsurance coverage on the date of the enactment of this Act and the claims-paying capacity of which is greater than the amount determined under subparagraph (A)(i) but less than an amount determined for the State under subparagraph (A)(iii), the minimum level of retained losses applicable under this paragraph shall be the claims-paying capacity of such State program.

(ii) AGREEMENT.—Clause (i) shall apply to a State program only if the State program enters into a written agreement with the Secretary providing a schedule for increasing the claims-paying capacity of the State program to the amount determined for the State under subparagraph (A)(iii) over a period not to exceed 5 years. The Secretary may extend the 5-year period for not more than 2 additional one-year periods if the Secretary determines that losses incurred by the State program as a result of covered perils create excessive hardship on the State program. The Secretary shall consult with the appropriate officials of the State program regarding the required schedule and any potential one-year extensions.

(C) TRANSITION RULE FOR NEW PROGRAMS.—

(i) 100-YEAR EVENT.—The Secretary may provide that, in the case of an eligible State program that, after January 1, 1999, commences offering insurance or reinsurance coverage, during the 5-year period beginning on the date that reinsurance coverage under section 6 is first made available, the minimum level of retained losses applicable under this paragraph shall be the amount determined for the State under subparagraph (A)(iii), except that such minimum level shall be adjusted annually as provided in clause (ii) of this subparagraph.

(ii) ANNUAL ADJUSTMENT.—Each annual adjustment under this clause shall increase the minimum level of retained losses applicable under this subparagraph to an eligible State program described in clause (i) in a manner such that—

(I) during the course of such 5-year period, the applicable minimum level of retained losses approaches the minimum level that, under subparagraph (A), will apply to the eligible State program upon the expiration of such period; and

(II) each such annual increase is a substantially similar amount, to the extent practicable.

(D) REDUCTION BECAUSE OF REDUCED CLAIMS-PAYING CAPACITY.—

(i) AUTHORITY.—Notwithstanding subparagraphs (A), (B), and (C) or the terms contained in a contract for reinsurance pursuant to such subparagraphs, if the Secretary determines that the claims-paying capacity of an eligible State program has been reduced because of payment for losses due to an event, the Secretary may reduce the minimum level of retained losses for the State commensurate with the current capacity of the State program, as determined by the Secretary, but in no case may such minimum level be less than the amount determined under subparagraph (A)(i).

(ii) TERM OF REDUCTION.—If the minimum level of retained losses for an eligible State program is reduced pursuant to clause (i), upon the expiration of the 5-year period beginning upon such reduction the minimum level of retained losses applicable to such State program under a contract for reinsurance coverage under section 6 shall be increased to an amount not less than the amount applicable to such State program immediately before such reduction.

(E) CLAIMS-PAYING CAPACITY.—For purposes of this paragraph, the claims-paying capacity of a State-operated insurance or reinsurance program under section 6(a)(1) shall be determined by the Secretary, in consultation with the Commission, taking into consideration the claims-paying capacity as determined by the State program, retained losses to private insurers in the State in an amount assigned by the State insurance commissioner, the cash surplus of the program, and the lines of credit, reinsurance, and other financing mechanisms of the program established by law.

(2) AUCTION CONTRACTS.—Subject to paragraphs (3) and (4) and notwithstanding any other provision of this Act, a contract for reinsurance coverage may not be made available or sold under section 7 through a regional auction unless the contract requires that the insurance industry in the region for which the auction was conducted sustains a cumulative amount of retained losses (in covered lines resulting from covered perils) of not less than the greater of—

(A) an amount between $2,000,000,000 and $5,000,000,000, that is determined by the Secretary in accordance with the requirement under section 3(c)(1); and

(B) an amount, determined by the Secretary in consultation with the Commission, that is in the range between the amount equal to the eligible loss projected to be incurred once every 100 years from a single event in the region and the amount equal to the eligible loss projected to be incurred once every 250 years from such an event.

(3) INITIAL ADJUSTMENT BASED ON PRIVATE MARKET.—The Secretary may, before making contracts for reinsurance coverage under this Act initially available under section 6 or 7, raise the minimum level of retained losses from the amount required under paragraph (1) for an eligible State program or under paragraph (2) for a region to ensure, as determined by the Secretary, that such contracts comply with the principle under section 3(c)(1).

(4) ANNUAL ADJUSTMENT.—The Secretary may annually raise the minimum level of retained losses established under paragraph (1) for an eligible State program or under paragraph (2) for a region to reflect, as determined by the Secretary—

(A) in the case of an eligible State program, changes to the claims-paying capacity of the program;

(B) changes in the capacity of the private insurance and reinsurance market;

(C) increases in the market value of properties; or

(D) such other situations as the Secretary considers appropriate.

The Secretary shall consider the minimum level of retained losses requirements in paragraphs (1) and (2) as minimum requirements only and shall have full authority, effective on the date of the enactment of this Act, to establish levels of required minimum retained losses in any amount greater than the amounts specified in such paragraphs. In making any determination under this paragraph in the minimum level of retained losses, the Secretary shall establish such level at an amount such that the program under this Act for making reinsurance coverage available does not displace or compete with the private insurance or reinsurance markets or capital markets, as determined by the Secretary after the Secretary has provided interested parties an opportunity to submit to the Commission market information relevant to such determination and has provided the Commission with an opportunity to advise the Secretary regarding such information and determination.

(5) OPTIONAL ANNUAL INFLATIONARY OR EXPOSURE ADJUSTMENT.—The Secretary may, on an annual basis, raise the minimum level of retained losses established under paragraph (1) for each eligible State program and under paragraph (2) for each region to reflect the annual rate of inflation or growth in exposures, whichever is greater. Any such raise shall be made in accordance with an inflation index or exposure index, as appropriate, that the Secretary determines to be appropriate. The first such raise may be made one year after contracts for reinsurance coverage under this Act are first made available for purchase.

(c) MAXIMUM FEDERAL LIABILITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may sell only contracts for reinsurance coverage under this Act in various amounts which comply with the following requirements:

(A) ESTIMATE OF AGGREGATE LIABILITY.—The aggregate liability for payment of claims under all such contracts in any single year is unlikely to exceed $25,000,000,000 (as such amount is adjusted under paragraph (2)).

(B) ELIGIBLE LOSS COVERAGE SOLD.—Eligible losses covered by all contracts sold within a State or region during a 12-month period do not exceed the difference between the following amounts (each of which shall be determined by the Secretary in consultation with the Commission):

(i) The amount equal to the eligible loss projected to be incurred once every 500 years from a single event in the State or region.

(ii) The amount equal to the eligible loss projected to be incurred once every 100 years from a single event in the State or region.

(2) ANNUAL ADJUSTMENTS.—The Secretary shall annually adjust the amount under paragraph (1)(A) (as it may have been previously adjusted) to provide for inflation in accordance with an inflation index that the Secretary determines to be appropriate.

(d) LIMITATION ON PERCENTAGE OF RISK IN EXCESS OF RETAINED LOSSES.—

(1) IN GENERAL.—The Secretary may not make available for purchase contracts for reinsurance coverage under this Act that would pay out more than 50 percent of eligible losses in excess of retained losses—

(A) in the case of a contract under section 6 for an eligible State program, for such State; and

(B) in the case of a contract made available through a regional auction under section 7, for such region.

(2) PAYOUT.—For purposes of this subsection, the amount of payout from a reinsurance contract shall be the amount of eligible losses in excess of retained losses multiplied by the percentage under paragraph (1).

SEC. 10. DISASTER REINSURANCE FUND.

(a) ESTABLISHMENT.—There is established within the Treasury of the United States a fund to be known as the Disaster Reinsurance Fund (in this section referred to as the "Fund").

(b) CREDITS.—The Fund shall be credited with—

(1) amounts received annually from the sale of contracts for reinsurance coverage under this Act;

(2) any amounts borrowed under subsection (d);

(3) any amounts earned on investments of the Fund pursuant to subsection (e); and

(4) such other amounts as may be credited to the Fund.

(c) USES.—Amounts in the Fund shall be available to the Secretary only for the following purposes:

(1) CONTRACT PAYMENTS.—For payments to covered purchasers under contracts for reinsurance coverage for eligible losses under such contracts.

(2) COMMISSION COSTS.—To pay for the operating costs of the Commission.

(3) ADMINISTRATIVE EXPENSES.—To pay for the administrative expenses incurred by the Secretary in carrying out the reinsurance program under this Act.

(4) TERMINATION.—Upon termination under section 14, as provided in such section.

(d) BORROWING.—

(1) AUTHORITY.—To the extent that the amounts in the Fund are insufficient to pay claims and expenses under subsection (c), the Secretary may issue such obligations of the Fund as may be necessary to cover the insufficiency and shall purchase any such obligations issued.

(2) PUBLIC DEBT TRANSACTION.—For the purpose of purchasing any such obligations, the Secretary may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities are issued under such chapter are hereby extended to include any purchase by the Secretary of such obligations under this subsection.

(3) CHARACTERISTICS OF OBLIGATIONS.—Obligations issued under this subsection shall be in such forms and denominations, bear such maturities, bear interest at such rate, and be subject to such other terms and conditions, as the Secretary shall determine.

(4) TREATMENT.—All redemptions, purchases, and sales by the Secretary of obligations under this subsection shall be treated as public debt transactions of the United States.

(5) REPAYMENT.—Any obligations issued under this subsection shall be repaid, including interest, from the Fund and shall be recouped from premiums charged for reinsurance coverage provided under this Act.

(e) INVESTMENT.—If the Secretary determines that the amounts in the Fund are in excess of current needs, the Secretary may invest such amounts as the Secretary considers advisable in obligations issued or guaranteed by the United States.

(f) PROHIBITION OF FEDERAL FUNDS.—Except for amounts made available pursuant to subsection (d) and section 11(h), no Federal funds shall be authorized or appropriated for the Fund or for carrying out the reinsurance program under this Act.

SEC. 11. NATIONAL COMMISSION ON CATASTROPHE RISKS AND INSURANCE LOSS COSTS.

(a) ESTABLISHMENT.—The Secretary shall establish a commission to be known as the National Commission on Catastrophe Risks and Insurance Loss Costs.

(b) DUTIES.—The Commission shall meet for the sole purpose of advising the Secretary regarding the estimated loss costs associated with the contracts for reinsurance coverage available under this Act and carrying out the functions specified in this Act.

(c) MEMBERS.—The Commission shall consist of not more than 5 members, who shall be appointed by the Secretary and shall be broadly representative of the public interest. Members shall have no personal, professional, or financial interest at stake in the deliberations of the Commission. The membership of the Commission shall at all times include at least 1 representative of a nationally recognized consumer organization.

(d) TREATMENT OF NON-FEDERAL MEMBERS.—Each member of the Commission who is not otherwise employed by the Federal Government shall be considered a special Government employee for purposes of sections 202 and 208 of title 18, United States Code.

(e) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at a rate not in excess of the daily equivalent of the annual rate of basic pay payable for level V of the Executive Schedule, for each day during which the individual procured is performing such services for the Commission.

(f) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate of basic pay payable for level V of the Executive Schedule, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(g) OBTAINING DATA.—The Commission and the Secretary may solicit loss exposure data and such other information either deems necessary to carry out its responsibilities from governmental agencies and bodies and organizations that act as statistical agents for the insurance industry. The Commission and the Secretary shall take such actions as are necessary to ensure that information that either deems is confidential or proprietary is disclosed only to authorized individuals working for the Commission or the Secretary. No company which refuses to provide information requested by the Commission or the Secretary may participate in the program for reinsurance coverage authorized under this Act, nor may any State insurance or reinsurance program participate if any governmental agency within that State has refused to provide information requested by the Commission or the Secretary.

(h) FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(A) $1,000,000 for fiscal year 2000 for the initial expenses in establishing the Commission and the initial activities of the Commission that cannot timely be covered by amounts obtained pursuant to sections 6(b)(6)(B)(iii) and 7(a)(3)(C), as determined by the Secretary;

(B) such additional sums as may be necessary to carry out subsequent activities of the Commission;

(C) $1,000,000 for fiscal year 2000 for the initial expenses of the Secretary in carrying out the program authorized under section 3; and

(D) such additional sums as may be necessary to carry out subsequent activities of the Secretary under this Act.

(2) OFFSET.—The Secretary shall provide, to the maximum extent practicable, that an amount equal to any amount appropriated under paragraph (1) is obtained from purchasers of reinsurance coverage under this Act and deposited in the Fund established under section 10. Such amounts shall be obtained by in-

clusion of a provision for the Secretary's and the Commission's expenses incorporated into the pricing of the contracts for such reinsurance coverage, pursuant to sections 6(b)(6)(B)(iii) and 7(a)(3)(C).

(i) TERMINATION.—The Commission shall terminate upon the effective date of the repeal under section 14(c).

SEC. 12. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) COMMISSION.—The term "Commission" means the National Commission on Catastrophe Risks and Insurance Loss Costs established under section 11.

(2) COVERED PERILS.—The term "covered perils" means the natural disaster perils under section 5.

(3) COVERED PURCHASER.—The term "covered purchaser" means—

(A) with respect to reinsurance coverage made available under a contract under section 6, the eligible State-operated insurance or reinsurance program that purchases such coverage; and

(B) with respect to reinsurance coverage made available under a contract under section 7, the purchaser of the contract auctioned under such section or any subsequent holder or holders of the contract.

(4) DISASTER AREA.—The term "disaster area" means a geographical area, with respect to which—

(A) a covered peril specified in section 5 has occurred; and

(B) a declaration that a major disaster exists, as a result of the occurrence of such peril—

(i) has been made by the President of the United States; and

(ii) is in effect.

(5) ELIGIBLE LOSSES.—The term "eligible losses" means losses in excess of the sustained and retained losses, as defined by the Secretary after consultation with the Commission.

(6) ELIGIBLE STATE PROGRAM.—The term "eligible State program" means a State program that, pursuant to section 6(a), is eligible to purchase reinsurance coverage made available through contracts under section 6.

(7) PRICE GOUGING.—The term "price gouging" means the providing of any consumer good or service by a supplier for a price that the supplier knows or has reason to know is greater, by at least the percentage set forth in a State law or regulation prohibiting such act (notwithstanding any real cost increase due to any attendant business risk and other reasonable expenses that result from the major disaster involved), than the price charged by the supplier for such consumer good or service immediately before the disaster.

(8) QUALIFIED LINES.—The term "qualified lines" means lines of insurance coverage for which losses are covered under section 4 by reinsurance coverage under this Act.

(9) REINSURANCE COVERAGE.—The term "reinsurance coverage under this Act" includes coverage under contracts made available under sections 6 and 7.

(10) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(11) STATE.—The term "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

SEC. 13. REGULATIONS.

The Secretary shall issue any regulations necessary to carry out the program for reinsurance coverage under this Act.

SEC. 14. TERMINATION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary may not provide any reinsurance coverage under this Act covering any period after the expiration of the 10-year period beginning on the date of the enactment of this Act.

(b) EXTENSION.—If upon the expiration of the period under subsection (a) the Secretary, in consultation with the Commission, determines that continuation of the program for reinsurance coverage under this Act is necessary to carry out the purpose of this Act under section 3(b) because of insufficient growth of capacity in the private homeowners' insurance market, the Secretary shall continue to provide reinsurance coverage under this Act until the expiration of the 5-year period beginning upon the expiration of the period under subsection (a).

(c) REPEAL.—Effective upon the date that reinsurance coverage under this Act is no longer available or in force pursuant to subsection (a) or (b), this Act (except for this section) is repealed.

(d) DEFICIT REDUCTION.—The Secretary shall cover into the General Fund of the Treasury any amounts remaining in the Fund under section 10 upon the repeal of this Act.

SEC. 15. ANNUAL STUDY OF COST AND AVAILABILITY OF DISASTER INSURANCE AND PROGRAM NEED.

(a) IN GENERAL.—The Secretary shall, on an annual basis, conduct a study and submit to the Congress a report on the cost and availability of homeowners' insurance for losses resulting from catastrophic natural disasters covered by the reinsurance program under this Act.

(b) CONTENTS.—Each annual study under this section shall determine and identify, on an aggregate basis—

(1) for each State or region, the capacity of the private homeowners' insurance market with respect to coverage for losses from catastrophic natural disasters;

(2) for each State or region, the percentage of homeowners who have such coverage, the disasters covered, and the average cost of such coverage;

(3) for each State or region, the progress that private reinsurers and capital markets have made in providing reinsurance for such homeowners' insurance;

(4) for each State or region, the effects of the Federal reinsurance program under this Act on the availability and affordability of such insurance; and

(5) the appropriate time for termination of the Federal reinsurance program under this Act.

(c) TIMING.—Each annual report under this section shall be submitted not later than March 30 of the year after the year for which the study was conducted.

(d) COMMENCEMENT OF REPORTING REQUIREMENT.—The Secretary shall first submit an annual report under this section 2 years after the date of the enactment of this Act.

SEC. 16. GAO STUDY OF HURRICANE RELATED FLOODING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the availability and adequacy of flood insurance coverage for losses to residences and other properties caused by hurricane-related flooding.

(b) CONTENTS.—The study under this section shall determine and analyze—

(1) the frequency and severity of hurricane-related flooding during the last 20 years in comparison with flooding that is not hurricane-related;

(2) the differences between the risks of flood-related losses to properties located within the 100-year floodplain and those located outside of such floodplain;

(3) the extent to which insurance coverage referred to in subsection (a) is available for properties not located within the 100-year floodplain;

(4) the advantages and disadvantages of making such coverage for such properties available under the national flood insurance program;

(5) appropriate methods for establishing premiums for insurance coverage under such program for such properties that, based on accepted actuarial and rate making principles, cover the full costs of providing such coverage;

(6) appropriate eligibility criteria for making flood insurance coverage under such program available for properties that are not located within the 100-year floodplain or within a community participating in the national flood insurance program;

(7) the appropriateness of the existing deductibles for all properties eligible for insurance coverage under the national flood insurance program, including the standard and variable deductibles for pre-FIRM and post-FIRM properties, and whether a broader range of deductibles should be established;

(8) income levels of policyholders of insurance made available under the national flood insurance program whose properties are pre-FIRM subsidized properties; and

(9) the number of homes that are not primary residences that are insured under the national flood insurance program and are pre-FIRM subsidized properties.

(c) CONSULTATION WITH FEMA.—In conducting the study under this section, the Comptroller General shall consult with the Director of the Federal Emergency Management Agency.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Congress regarding the findings of the study, not later than 5 months after the date of the enactment of this Act.

EXPLANATION OF THE LEGISLATION

H.R. 21, the "Homeowners' Insurance Availability Act of 1999" creates a voluntary temporary Federal reinsurance [1] backstop to efforts by states and the private market to make catastrophic insurance for homeowners living in disaster-prone regions of the country more available.

FINDINGS AND PURPOSES

Major catastrophes, including Hurricane Andrew (1992), Hurricane Iniki (1992), the Northridge Earthquake (1994), and others more recently have led to a lack of available homeowners' insurance coverage in risk-prone areas across the country. Testimony before the Committee in the 106th Congress has shown evidence of such availability problems in coastal regions prone to hurricane losses as well as areas at risk to seismic activity in the Midwest, West Coast and Pacific Northwest.

In several states, including Florida, California and Hawaii, state governments have intervened to prevent a near total collapse in private insurance markets in the wake of natural disasters. According to the California Insurance Department, following the California Northridge earthquake in 1994, 95% of the homeowners' insurance market in the state would not provide new coverage. The Hawaii and Florida markets were similarly affected following catastrophes in 1992. In response, Florida created the Florida Catastrophe Reinsurance Fund in 1993, followed soon thereafter by the Hawaii Hurricane Relief Fund (1994) in Hawaii and the California Earthquake Authority (1996) in California. These programs stabilized local insurance markets and provided a source of coverage for homeowners who could otherwise not obtain it. All are capable of paying loss claims from events of some severity, but cannot be reasonably expected to handle the worst case events that are likely to occur infrequently.

In California, for example, the state earthquake authority has purchased some of the largest private reinsurance contracts in history, costing more than $350 million out of $394 million in premiums collected last year to purchase approximately $2.5 billion in private reinsurance. Nevertheless, the state program has access to only $7.5 billion for payment of claims even though the program's total liability is $163 billion in potential losses according to testimony before the California State Senate Insurance Committee in October 1999. In the event a natural disaster exceeds the capacity of a state's insurance program, homeowners would receive only partial claims for losses, bankrupting the state insurance fund, damaging state real estate and insurance industries, and ultimately endangering the health of local economies.

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[1] Reinsurance is a risk transfer mechanism that traditionally has come in the form of insurance for insurance companies. In the property casualty business, in particular, the more risk an insurance company accumulates, the more capital it needs and the more volatile its earnings become, and the more the need to transfer risk. For example, in a typical excess of loss reinsurance contract, the reinsurer agrees to indemnify an insurance company for all or part of losses in excess of a fixed dollar amount called an attachment point. Once the attachment point, or trigger, is reached, losses would be covered by reinsurance purchased by the primary insurance company.

Many other risk-prone states, such as Texas, Louisiana, North Carolina, Virginia, New Jersey, New York, Maryland, Delaware, Rhode Island, Connecticut and Massachusetts, as well as Tennessee, Missouri, Arkansas, Illinois, Indiana, Washington and Oregon do not have state insurance programs similar to those in California, Hawaii and Florida. In some of these areas, however, applications to state FAIR (Fair Access Insurance Requirements) plans and beach plans (so-called markets of last resort for homeowners' insurance which generally provide less coverage at a greater price) increased dramatically during the last half of the 1990s (California +309%, Louisiana +741%, Massachusetts +66%, New York +31%, Mississippi +75%, Florida +533, South Carolina +213%). Even with state intervention, a worst-case catastrophe would likely cause considerable insolvencies among private insurers. No matter where a worst-case disaster may occur, it is reasonable to expect that under-protected states and unprotected homeowners will look to the Federal government for the sort of emergency supplemental relief that history has shown they are likely to receive.

Despite some improvements since the mid-1990s, information presented to the Committee indicates that homeowners' insurance availability problems continue to exist. According to the Swiss RE Group, recognized as one of the world's leading private market reinsurers, natural catastrophes made 1998 the third-worst year on record for catastrophe insurers and reinsurers worldwide. As a result, some in the industry have begun to reduce their catastrophic capacity for certain markets and certain perils. In addition, the Insurance Services Office, a non-profit corporation that makes available advisory rating, statistical, actuarial and related services to U.S. property/casualty insurers, estimates that a catastrophe costing the insurance industry between $50 and $100 billion could result in the insolvency of up to 36 percent of all insurers, depending on where the event occurs, and leave consumers with unfunded claims of up to $56 billion. According to U.S. RE Group, a recognized reinsurance broker, "roughly $24 billion of aggregate catastrophe excess-of-loss reinsurance is being provided currently to insurers across the United States. This represents at best 10 to 15 percent of the worst case scenario. The global reinsurance market does not have sufficient capital to meet U.S. catastrophe coverage requirements."

Should the recent trend of larger losses from natural disaster continue in the future, together with limited insurance capacity for large-scale events in the private marketplace, the consequences could be serious for the Federal government. Between FY1977 and FY1993, the Federal government spent $87 billion for post-disaster recovery assistance according to the Senate bipartisan Task Force on Funding Disaster Relief. Since FY1993, the Federal Emergency Management Agency (FEMA) alone, not including the Small Business Administration or the Departments of Agriculture or Commerce, spent more than $22 billion on disaster relief.

Forecasters who have testified before the Committee predict that the East and Gulf Coasts are entering what is likely to be an even more damaging period of frequent storms. According to U.S. RE Group, a Category 5 hurricane (wind speeds of 155 miles per hour or more) could cost more than $110 billion if it hit the New Eng-

land coastline. The most costly hurricane in recent history, Hurricane Andrew, caused $16.5 billion in insured losses concentrated south of Miami. If Hurricane Andrew had blown through Miami, only 20 miles north, the losses would have approached $50 billion. Considering that 75% of the U.S. population will be living within 100 miles of a U.S. coastline by the year 2010, according to Department of Commerce estimates, these potential events could cause even further erosion in the insurance safety net.

LEGISLATIVE HISTORY

Early in the 104th Congress, in an effort to address the rising Federal costs of natural disasters and the growing lack of available homeowners' insurance in vulnerable areas, Representative Bill Emerson (R–MO), Senator Ted Stevens (R–AL), Representative Norman Mineta (D–CA), Senator Daniel Inouye (D–HI) and more than 220 Members of Congress sponsored comprehensive natural disaster protection legislation. That legislation ultimately did not proceed to markup, in part because the bill's all-encompassing approach made it difficult to achieve consensus.

On the first day of the 105th Congress, Representative Rick Lazio (R–NY), the Chairman of the Subcommittee on Housing and Community Opportunity, joined with Representatives Bill McCollum (R–FL) and Vic Fazio (D–CA) to introduce H.R. 219, the "Homeowners' Insurance Availability Act of 1997." The legislation was originally designed to complement only state efforts to address rising natural disaster costs and the growing lack of available homeowners' insurance with minimal Federal involvement to encourage the resuscitation of the industry. The Subcommittee on Housing and Community Opportunity held hearings on the legislation on June 25, 1997, and August 25, 1997. On February 4, 1998, H.R. 219 was marked up and passed the Housing Subcommittee by a vote of 16 to 6. The full Committee heard testimony on the legislation on April 23, 1998, including testimony from U.S. Department of Treasury Deputy Secretary Lawrence Summers. In his testimony, Deputy Secretary Summers stated that there is an "urgent need for moving forward on a timely basis [with Federal disaster reinsurance legislation, and that] we see great promise in [H.R. 219] as a means of addressing many of the problems related to the availability and price of insurance and reinsurance for disaster risks." He went on to note that the capital market solutions to natural disaster exposure are "in a relatively early stage of development, [and] clearly, a serious problem remains in the interim." He concluded that "[p]rogress on this issue has been too long in coming [and that] we all share a clear recognition of the urgent need to move forward on a timely basis." H.R. 219 was marked up in full Committee and was favorably reported to the House by a vote of 33–12 on July 15, 1998.

On the first day of the 106th Congress, Subcommittee Chairman Lazio joined with Committee Chairman James A. Leach (R–IA), Ranking Member John J. LaFalce (D–NY), Vice Chairman Bill McCollum joined and 43 other House Members to introduce H.R. 21, the "Homeowners' Insurance Availability Act of 1998" as it passed the Committee as H.R. 219 on July 15, 1998. The Subcommittee on Housing and Community Opportunity held hearings

on the legislation on April 28, 1999, and July 12, 1999. The full Committee heard testimony on the legislation on July 30, 1999, including testimony from U.S. Department of Treasury Deputy Secretary Stuart Eizenstat. In his testimony, Deputy Secretary Eizenstat stated that H.R. 21 "constructively and creatively responds to the difficulty faced by both state funds and private entities in purchasing reinsurance against their large, but low-probability losses on homeowners' insurance" and that a "well-designed reinsurance program for homeowners" losses could help provide the foundation for communities, individuals, and the private markets on which they depend to make a sound recovery in financial terms" in the aftermath of a natural disaster. H.R. 21 was marked up in full Committee on November 9 and 10, 1999, and was favorably reported to the House by a vote of 34–18 on November 10, 1999.

BACKGROUND AND NEED FOR LEGISLATION

During the 106th Congress, three hearings were held on H.R. 21, two at Subcommittee and one before the full Committee.

Deputy Treasury Secretary Stuart Eizenstat stated in testimony that H.R. 21 is a "positive step forward," that the legislation "constructively and creatively responds to the difficulty faced by both state funds and private entities in purchasing reinsurance against their large, but low-probability losses on homeowners' insurance," and that the bill is a "sound foundation for progress."

Dr. William M. Gray, Professor of Atmospheric Science at Colorado State University, stated in testimony that "trends in global oceanic and atmospheric observations during recent years indicate that we are entering (or reverting to) a multi-decadal period of increased intense or 'major' hurricane activity," and that "the cost of U.S. hurricane-spawned destruction will most certainly rise to unprecedented magnitudes."

Mr. W. Cloyce Anders, Regional Director of the Volunteer Firemen's Insurance Services, Inc. in North Carolina and testifying on behalf of the Independent Insurance Agents of America stated that "insurance companies who have done business in North Carolina for decades are no longer willing to write windstorm coverage to meet existing demand," regardless of the price of the coverage. Mr. Anders also noted that the availability condition is not "limited to beach communities and the affluent. In North Carolina, many insurance companies will not write hurricane coverage and many others will not write property coverage of any kind for any home which is located east of Interstate 95 [which is] as much as 150 miles from the Atlantic Ocean. The [North Carolina Insurance Underwriting Association, a market of last resort] accepts applications from residents in 18 counties. The vast bulk of the applications come from middle class families that live up to an hour's drive from the coast."

Mr. Arthur Sterbcow, President, Latter and Blum, in New Orleans, LA and testifying on behalf of the National Association of Realtors stated that "the inability to obtain affordable homeowners' insurance is a serious threat to the residential real estate market." He noted that "a strong housing market is a linchpin of a healthy economy, generating jobs, wages, tax revenues and a demand for

goods and services [and in] order to maintain a strong economic climate, we must safeguard the vitality of residential real estate."

Ms. Susanne Murphy, Deputy Insurance Commissioner with the State of Florida testified that if Hurricane Andrew in 1992 had "shifted just one degree to the north, slamming into downtown Miami or Fort Lauderdale, it would have left insured losses of not $16 billion, but more than $50 billion. The reserves of all the insurers would not have carried the day; untold thousands of homeowner claims would have gone unpaid; banks would have been stuck with abandoned mortgages and would have stopped making new loans; the state's home-building industry would have come to a screeching halt; and property values would have plummeted."

Dr. Jack E. Nicholson, Chief Operating Officer of the Florida Hurricane Catastrophe Fund, testified that "[w]orldwide reinsurance capacity was severely impacted following Hurricane Andrew. Aggregate reinsurance limits were only available for $200 million or less per company and the cost many times exceeded 25% to 30% of the coverage. The terms of reinsurance contracts were also tightened resulting in less coverage." He went on to note that "the experience of Hurricane Andrew taught us an important lesson and exposed the limitations of relying solely on the private reinsurance market for catastrophic coverage."

Mr. Roger Joslin, Chairman of the Board of State Farm Fire and Casualty Company, testified that "insured losses from major natural catastrophes in several regions of the country such as California, the Southeast including but not limited to Florida, and the Midwestern earthquake zone, could reach as high as $75 billion to $100 billion. Events of this magnitude far exceed the claims paying capacity of most private insurers and all existing state funds."

Mr. Ronald Hanna, Deputy Commissioner of the Mississippi Insurance Department, testified that the "Gulf Coast is a very volatile insurance market. Many companies are continually changing their underwriting strategies. This cycle creates a disruptive market and reflects the underlying issues of property companies unable to commit to a consistent pattern of controlled growth. The Mississippi Windstorm Underwriting Association, a market of last resort for residents unable to obtain traditional insurance coverage, has more than doubled in size since 1993." He noted that "several years ago, when a series of natural disasters occurred both here and abroad, there was great concern about shrinking reinsurance markets and the escalating prices primary insurance companies had to pay for reinsurance coverage. There is no question that a series of future catastrophes could once again affect the availability and affordability of reinsurance."

Mr. Robert W. Pike, Executive Vice President, Secretary and General Counsel of Allstate Insurance Company, testified that Allstate claims resulting from Hurricane Andrew "exceeded all of the premiums we collected in Florida over 50 years and consumed 42% of our nationwide surplus." He went on to note that "Allstate buys more private reinsurance than any property insurance company in the United States. We want to buy more reinsurance, but after five years of trying, we still cannot find coverage in sufficient quantities and at prices which make it a practical means for managing our worst-case risks."

PURPOSE AND SUMMARY

A. Overview

H.R. 21, the "Homeowners' Insurance Availability Act of 1999" requires the Department of Treasury to offer voluntary, single peril (hurricane, earthquake, tornado or volcano), multiple event Federal reinsurance contracts for (1) direct sale to eligible state-operated insurance and reinsurance programs (existing and future); and (2) auction by region to private market participants as well as state-operated programs for coverage of residential losses reported within three years of a qualifying natural disaster. Qualifying private market entities are granted the opportunity to offer state-operated insurance programs substantially similar reinsurance coverage in lieu of coverage offered by the Treasury.

In the event Federal reinsurance under a particular contract is exhausted due to payment for event losses, the purchaser has an opportunity to purchase additional contracts at identical terms prorated based upon the remaining term of the original contract, but which do not become effective until 15 days after the date of purchase.

Reinsurance coverage offered by the Federal government would cover only a percentage of losses above a deductible, or trigger, set by state or region by the Secretary of the Treasury in consultation with the National Commission on Catastrophe Risks and Insurance Loss Costs established in the legislation. It is intended that these trigger levels are the minimum required levels and that Treasury may set the trigger as high as necessary to achieve program goals.

Minimum trigger levels are as follows:

State Programs	Regional Auctions
Triggers must be at least the greater of: 1. A range between $2 billion and $5 billion in residential losses, or 2. State program claims-paying capacity, or 3. A range between an amount sufficient to cover residential losses resulting from an event that has a likelihood of occurring once every 100 years and once every 250 years.	Triggers must be at least the greater of: 1. A range between $2 billion and $5 billion in residential losses, or 2. A range between an amount sufficient to cover residential losses resulting from an event that has a likelihood of occurring once every 100 years and once every 250 years.

For existing State programs with claims paying capacity below the one-in-one-hundred-year event, the Secretary would have authority to set interim trigger levels over a five year period to permit the program to achieve the required level of claims-paying capacity. If necessary, the Secretary could provide two additional one-year extensions should the State sustain significant unforeseen losses from covered claims.

For state programs, Treasury may reduce the required minimum deductible if a state's claims-paying capacity has been reduced from a natural disaster. Such reduction is allowed only for a period of up to five years, after which the state program must return to its original deductible level. Additionally, the Secretary has the discretion, in consultation with the National Commission on Catastrophic Risks and Insurance Loss Costs, to set trigger levels below $2 billion for new state programs for those states that have a one in 100 year event that is less than $2 billion in residential losses and at

a level sufficient to cover eligible losses. However, such state programs are required to transition to a level at least as high as $2 billion over a period of five years.

In establishing program trigger levels, the Treasury is prohibited from offering Federal coverage at levels that would compete or displace the private insurance or reinsurance markets. Once the trigger level has been exceeded (i.e., a state program or the insurance industry by region pays out losses equal to the deductible level), Federal reinsurance pays 50 cents for every dollar of eligible losses above the deductible level.

Annual Federal liability is restricted by limitations on the expected annual payment for coverage of $25 billion or less and by capping the amount of Federal reinsurance sold by state and by auction region through formula. The limitation on estimated payments is accomplished in Section 8(c)(A) by establishing a "soft" cap on the amount of Federal reinsurance that may be sold by requiring that expected payments on all outstanding contracts not exceed $25 billion in any one year. That estimate is made by Treasury as advised by the Commission (which would likely contract with outside expects for additional analysis).

Further protection against liability is accomplished through Section 8(c)(B) by establishing a "hard" cap on what may be sold by state and by auction region through formula. Simply, Treasury calculates the difference between the one in 500 year-event and the one in 100 year-event for each state and for each regional auction. That figure is the amount that may be sold to each above the trigger levels. To illustrate:

> The 1/500 year-event for State A is $20 billion and the 1/100 year-event for State A is $12 billion. The difference between the two estimates, $20 billion minus $12 billion, is $8 billion. Assuming State A purchases the entire amount of coverage it is allowed ($8 billion), if State A suffers a $20 billion loss, it collects on its entire contract and receives $4 billion after accounting for the required 50% copay rate (50% of $8 billion is $4 billion).

Participating state programs and private market entities pay premiums established by the Secretary based upon the recommendations of the Commission of at least twice the actuarial risk of the coverage to ensure that the program would be cost neutral. Auction participants competitively bid for contracts above the minimum premium established by Treasury that includes the above minimum requirement as well as a component taking into account mitigation efforts in the particular region. Such premiums are designed to provide for program self-sufficiency. Private market purchasers must pay an additional amount determined by the Secretary in consultation with the Director of the Federal Emergency Management Agency (FEMA) of up to five percent of the contract purchase price to designated communities for mitigation activities. The Committee expects the Treasury, in consultation with FEMA, to develop through regulations the process in which the mitigation funds are held in independent escrow until the designated community submits an approvable plan for use of the funds.

H.R. 21 imposes reasonable consumer safeguards as a condition for State participation in the federal reinsurance program. It instructs the Secretary to develop regulations to insure that state programs have public members on their board of directors. Insurance policies covering the peril insured by the program must be generally unavailable elsewhere in the private market. Insurance policies available from state programs should be reasonably available and affordable to consumers and made available on a nondiscriminatory basis. States and localities covered by a state program must implement mitigation measures, such as effective building fire and safety codes, for all new construction, substantial rehabilitation and substantial renovation insured by the program and insurance policies must be priced to reflect these mitigation efforts.

Two years after enactment and annually thereafter throughout the life of the program, Treasury must conduct and submit to Congress a study on the cost and availability of catastrophic homeowners' insurance, including an identification of an appropriate time for program termination.

In addition, the General Accounting Office, in consultation with FEMA, is required to submit to Congress a study of the availability and adequacy of flood insurance coverage for losses to residences and other properties caused by hurricane-related flooding.

The program sunsets after 10 years unless Treasury determines there has been insufficient growth in private market capacity. In such a case, Treasury may extend the program for up to five additional years. Any revenue remaining in the program is transferred into the General Fund of the Treasury for purposes of deficit reduction.

B. Minimal Federal complement to State and private sector efforts

Paramount among the Committee's concerns has been developing a solution to a very real and urgent need for available catastrophic homeowners' insurance without excessive or unnecessary Federal involvement. The Committee believes such balance has been achieved in H.R. 21 by establishing prohibitions against offering Federal coverage at levels that would compete or displace the private sector, by requiring that program participants either self-insure or purchase private reinsurance for an amount equal to the total of Federal coverage purchased, and by terminating the Federal program after 10 years unless the Secretary determines that there has been insufficient growth in private market capacity, in which case, the program may be extended for a period of up to five years.

Section 3(c) of the bill provides that the contracts of Federal reinsurance provided under the bill for either state programs under Section 6, or as auctioned by Treasury under Section 7, not displace or compete with insurance, reinsurance or capital markets, but instead provide catastrophe capacity above the levels the private sector already provides.

As an additional protection against unnecessary Federal involvement with state-operated programs, Section 6(c) requires the Secretary to give private market reinsurance entities a "right of first refusal" in Federal reinsurance offered for direct sale to state-operated programs. If qualifying private market entities are willing to

offer coverage at rates and terms that would be substantially similar to coverage offered by the Federal government as approved by the Secretary, Treasury may not offer such coverage during the relevant contract cycle.

Section 9 of the Committee bill requires that the stated retained losses at which the Federal reinsurance attaches or triggers are to be understood as minimum levels only. Section 9(b)(4) provides that the Secretary shall adjust the attachment points based on a number of criteria, including an assessment of capacity to retain catastrophe risk in the private insurance, reinsurance and capital markets or in the state programs, and the requirement that the Federal program not displace or compete with those markets. The Committee expects that the Secretary would first determine the private market's capacity to retain risk and then set the attachment points above those minimums, consistent with the analysis of private market capacity.

In Section 9(d) of the Committee bill, Treasury is restricted from offering Federal coverage for more than 50% of the risk of insured losses in excess of minimum retained losses. More simply, the Federal reinsurance will pay only 50 cents for every dollar in eligible losses. The Committee agreed to this limitation at the request of the Administration and in recognition of the need to avoid discouraging the development of private market capacity to absorb catastrophic losses. The Committee believes that the risk-sharing/copayment requirement will, in fact, encourage and accelerate the development of private market financing mechanisms.

Additionally, the Committee approved an amendment to sunset the Federal program after 10 years unless Treasury determines there has been insufficient growth in private market capacity. In such a case, Treasury may extend the program for up to five additional years. The Committee included this provision to clearly establish that the most effective and efficient mechanisms for protecting against catastrophic loss ultimately reside in the private market. It is intended that the temporary Federal presence envisioned in H.R. 21 simply provide for continuity and relative calm through private market disruption, and in no way replace or compete with the private sector.

C. States with less risk exposure

The Committee would note that while the legislation requires Treasury to conduct no less than six regional auctions of Federal reinsurance contracts across the country, the Committee does not intend to require that each and every state be included in one region or another. In particular, for those few states in the northern Great Plains, including Nebraska, Montana, North Dakota and South Dakota, among others, that suffer from relatively small risk of hurricane, earthquake or volcano exposure, the Committee would not expect that Treasury would determine such states necessarily be included in the regional auction component of the legislation. In addition, in Section 7(a)(2) the Secretary is directed to attempt to create regions of similar risk, and not combine states at less risk of losses to covered perils with states at higher risk.

Finally, the legislation includes a provision providing the Secretary discretion to allow new state-operated insurance programs

five years to reach a minimum trigger level of $2 billion if, according to the National Commission on Catastrophe Risks and Insurance Loss Costs, an event likely to occur in the state once every 100 years causes losses which are less than $2 billion. It should be noted that in considering such a reduction in minimum triggers as set forth in the legislation, the Secretary should not displace or otherwise compete with reinsurance coverage available in the private reinsurance market. The purpose of the provision is to assure that all states are treated fairly and equitably by the Federal program, considering differences in the frequency and severity of natural catastrophes among states as well as the relative size and financial capacity of the local insurance and reinsurance markets

D. Transferability of reinsurance contracts

The Committee strongly believes that Federal reinsurance contracts should be fully transferable, assignable and divisible so that a secondary market for these instruments will develop. This secondary market should allow a more efficient distribution of reinsurance contracts, particularly among insurers too small to bid in the primary auction. It will also guide the Secretary in gauging the true value of federal contracts and setting the reserve prices for future auctions.

It is the Committee's intent for this provision to be broadly interpreted. In section 7(b)(2), the words "at all times" mean that a contract holder may transfer ownership of any or all of a contract to another owner either before or after any catastrophic loss event. It is to be understood that "transferable" means that the new owner(s) of a contract accede to the same rights under the contract, as acquired by and vested in the original owner. It is further understood that "assignable" provides that an owner of a contract may transfer all or any part of its interest or rights in a contract over to another. It is still further understood that "divisible" allows for any division, partition or apportionment of contracts as may be agreed upon by the buyer and seller.

E. Additional background and explanation

Pursuant to an amendment adopted by the Committee, H.R. 21 would require, as a condition for an insurer entering into a reinsurance contract under the legislation, that the purchasing insurer certify that, neither it nor any of its affiliates have either (i) been adjudicated in any federal court under the Fair Housing Act and, (ii) subsequent to the date of enactment, violated any consent decree or settlement agreement (as determined by a court of competent jurisdiction or the agency with which the decree or agreement was entered into) premised upon a violation of the Fair Housing Act. A similar certification requirement would apply with respect to State contracts under the legislation for insurers participating in State-operated programs.

With regard to this amendment, the Committee takes no position regarding the legitimacy or appropriateness of judicial or administrative applications of the Fair Housing Act to the business of insurance. The Committee notes that other Committees have expressed adverse views about such applications of the statute, and have determined that the Department of Housing and Urban De-

velopment's pursuit of regulatory authority over the property insurance industry through the Fair Housing Act is not within the ambit of the law.[2] This Committee intends that this legislation have no legal significance with respect to determinations regarding the scope and proper application of the Fair Housing Act.

Pursuant to an amendment adopted by the Committee in a previous version of the bill, Section 10(h) of the Committee bill authorizes the Commission and Treasury to solicit loss exposure data, and such other information deemed necessary to carry out the program responsibilities under this Act, from governmental agencies and bodies and organizations that act as statistical agents for the insurance industry. It is anticipated that the data will be solicited from statistical agents, which collect data on the insurance industry, such as the Insurance Services Office, the National Association of Independent Insurers and the American Association of Insurance Services. These data are maintained in aggregate form to preserve individual company confidentiality. The Committee recognizes that individual company loss data and related information constitute trade secrets and their disclosure is prohibited by law. Section 10(h) of the bill contains language intended to protect even the aggregate data to be solicited from statistical agents by specifically requiring the Secretary and the Commission to take such steps as are necessary to ensure that the information remains confidential and is not disclosed to any one other than authorized individuals working for the Commission or Treasury.

Section 10(h) also provides that if a company or a state refuses to provide information requested by the Commission or Treasury, it shall be ineligible to participate in the programs authorized by the Act. It is anticipated that this section would be enforced in situations where a statistical agent, which has collected industry information and provided it in an aggregated form to the Commission of the Treasury, notifies either of these bodies that a company or other entity had refused to provide the needed information for transmission, in an aggregate form, to the Commission or Treasury.

HEARINGS

The Subcommittee on Housing and community Opportunity held two hearings on the "Homeowners' Insurance Availability Act of 1999."

The first hearing was held on Wednesday, April 28, 1999, in Room 2128 Rayburn House Office Building. Testifying before the Subcommittee were: Dr. Bill Gray, Ph.D., Professor of Atmospheric Science, Colorado State University, CO; Mr. W. Cloyce Anders, President and Regional Director, Volunteer Firemen's Insurance Service of North Carolina, Raleigh, NC on behalf of the Independent Insurance Agents of America; Mr. Roger M. Singer, Senior Vice President and General Counsel of the CGU Insurance Compa-

[2] See, e.g., S. Rep. No. 106–161, at 54 (1999) ("the Committee remains concerned that [the Department of Housing and Urban Development] continues to pursue regulatory authority over the property insurance industry through the Fair Housing Act. This activity is not within the ambit of the law."). See also H.R. Rep. 106–286, at 34 (1999); S. Rep. No. 105–216, at 49–50 (1998); H.R. 105–610, at 39 (1998); S. Rep. No. 105–53, at 42–43 (1997); H.R. Rep. 105–175, at 43 (1997) (similar statements).

nies, Boston, MA; and Mr. Arthur Sterbcow, President, Latter and Blum, New Orleans, LA on behalf of the National Association of Realtors.

The second hearing was held on Monday, July 12, 1999, at Hillsborough County Aviation Authority at the Tampa International Airport in Tampa, Florida. Testifying before the Subcommittee were: Ms. Susanne Murphy, Deputy Insurance Commissioner, Department of Insurance, State of Florida; The Honorable Leslie Waters, Vice-Chairman, Committee on Insurance, Florida State House of Representatives; Mr. Rade Musulin, Vice-President, Florida Farm Bureau Insurance Company; Mr. Jack Nicholson, Chief Operating Officer, Florida Hurricane Catastrophe Fund; Mr. Larry Gispert, Director of Emergency Management, Hillsborough County; and Ms. Pamela Duncan, Director, Department of Community Affairs' Office of Legislative Affairs, State of Florida.

The Committee on Banking and Financial Services held one hearing on July 30, 1999, in Room 2128 Rayburn House Office Building. Testifying before the Committee were: The Honorable Stuart E. Eizenstat, Deputy Secretary, U.S. Department of Treasury; Mr. Roger Joslin, Chairman of the Board, State Farm Fire and Casualty Co., Bloomington, Illinois; Mr. Ronald E. Hanna, Deputy Commissioner, Mississippi Insurance Department; Mr. Frank Nutter, President, Reinsurance Association of America Mr. Don Beery, Vice President of Eustis Insurance Inc., New Orleans, Louisiana on behalf of The Independent Insurance Agents of America; Ms. Mary Fran Myers, Co-Director, Natural Hazards Research and Applications Information Center, University of Colorado; Mr. Travis Plunkett, Legislative Director, Consumer Federation of America on behalf of Mr. J. Robert Hunter, Director of Insurance, Consumer Federation of America; Mr. Jack Weber, President, Home Insurance Federation of America; Mr. Robert W. Pike, Executive Vice-President, Administration, Allstate Insurance Company, Northbrook, Illinois; Mr. Darryl D. Hansen, Chairman, President and CEO, Guide One Insurance Group, West Des Moines, Iowa on behalf of The National Association of Independent Insurers; Mr. Tom Miller, Director of Economic Policy Studies, Competitive Enterprise Institute; Ms. Barbara Connery, Member of the North Carolina Association of Realtors on behalf of the National Association of Realtors; and Mr. Scott A. Gilliam, Assistant Secretary, Director of Government Relations, The Cincinnati Insurance Companies.

Committee consideration and votes (rule XI, clause 2(l)(2)(B))

The Committee met in open session to markup H.R. 21, "Homeowners' Insurance Act of 1999" on November 9 and 10, 1999. The Committee considered, as original text for purposes of amendments, a Committee Print, which incorporated H.R. 21 as introduced.

During the markup, the Committee approved 11 amendments, including a managers amendment by voice vote. The Committee also defeated 5 amendments by voice vote. The Committee approved 1 amendment by recorded vote. The Committee defeated 9 amendments by recorded vote. Pursuant to the provisions of clause 2(l)(2)(B) of rule XI of the House of Representatives, the results of

each rollcall vote and the motion to report, together with the names of those voting for and those against are printed below:

Rollcall No. 1

Date: November 9, 1999.
Measure: Homeowners' Insurance Availability Act of 1999.
Motion by: Mr. Lazio.
Description of Motion: Caps reinsurance liability at $25 billion.
Results: Defeated: Ayes 18, Nays 27.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mrs. Roukema	Mr. Campbell
Mr. Bereuter	Dr. Paul
Mr. Baker	Dr. Weldon
Mr. Lazio	Mr. Riley
Mr. Bachus	Mr. Hill
Mr. Royce	Mr. LaFalce
Mr. Lucas	Mr. Vento
Mr. Barr	Mr. Frank
Mrs. Kelly	Mr. Sanders
Mr. Cook	Mrs. Maloney
Mr. LaTourette	Mr. Gutierrez
Mr. Jones	Mr. Watt
Mr. Ose	Mr. Ackerman
Mr. Sweeney	Mr. Bentsen
Mrs. Biggert	Mr. Maloney
Mr. Green	Ms. Hooley
Mr. Toomey	Mr. Weygand
	Mr. Sherman
	Mr. Sandlin
	Mr. Meeks
	Mr. Goode
	Ms. Schakowsky
	Mr. Moore
	Mr. Gonzalez
	Mr. Capuano
	Mr. Forbes

Rollcall No. 2

Date: November 9, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Mr. Hill.

Description of Motion: Removes fire ensuing from an earthquake from the list of covered perils.

Results: Defeated: Ayes 13, Nays 23.

YEAS	NAYS
Mr. Bereuter	Mr. Leach
Mr. Bachus	Mr. McCollum
Mr. Royce	Mrs. Roukema
Mr. Barr	Mr. Baker
Dr. Paul	Mr. Lazio
Mr. Hill	Mr. Campbell
Mr. Ose	Mr. Lucas
Mr. Green	Mrs. Kelly
Mr. Toomey	Dr. Weldon
Mr. LaFalce	Mr. Cook
Ms. Schakowsky	Mr. Riley
Mr. Moore	Mr. Jones
Mr. Gonzalez	Mrs. Biggert
	Mr. Gutierrez
	Mr. Watt
	Mr. Maloney
	Ms. Hooley
	Mr. Weygand
	Mr. Sherman
	Mr. Sandlin
	Mr. Goode
	Mr. Capuano
	Mr. Forbes

Rollcall No. 3

Date: November 9, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Mr. Vento.

Description of Motion: Requires the purchasers of a contract to contribute an amount that is not less than 10% of the contract price to state agencies to implement disaster prevention measures and to ensure the enforcement of any codes or standards that offer disaster resistance at least as strong as that issued by the Federal Emergency Management Agency (FEMA).

Results: Defeated: Ayes 15, Nays 20.

YEAS	NAYS
Dr. Paul	Mr. Leach
Mr. Hill	Mr. McCollum
Mr. Toomey	Mrs. Roukema
Mr. LaFalce	Mr. Baker
Mr. Vento	Mr. Lazio
Mr. Sanders	Mr. Campbell
Mrs. Maloney	Mr. Royce
Mr. Watt	Mr. Lucas
Ms. Hooley	Mr. Barr
Mr. Weygand	Mrs. Kelly
Mr. Sherman	Dr. Weldon
Mr. Inslee	Mr. Ryun
Ms. Schakowsky	Mr. Cook
Mr. Moore	Mr. Riley
Mr. Capuano	Mr. Ryan
	Mr. Ose
	Mr. Sweeney
	Mr. Terry
	Mr. Green
	Mr. Bentsen

Rollcall No. 4

Date: November 9, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Mr. Capuano.

Description of Motion: Requires insurance companies that participate in the program to meet the insurance needs of the communities they serve.

Results: Defeated: Ayes 22, Nays 22.

YEAS	NAYS
Mr. Campbell	Mr. Leach
Mr. LaFalce	Mr. McCollum
Mr. Vento	Mrs. Roukema
Mr. Frank	Mr. Baker
Mr. Kanjorski	Mr. Lazio
Mr. Sanders	Mr. Castle
Mrs. Maloney	Mr. Royce
Mr. Gutierrez	Mr. Ney
Ms. Velazquez	Mrs. Kelly
Mr. Watt	Dr. Weldon
Mr. Ackerman	Mr. Ryun
Mr. Bentsen	Mr. Cook
Ms. Hooley	Mr. Riley
Ms. Carson	Mr. Ryan
Mr. Sandlin	Mr. Ose
Mr. Meeks	Mr. Sweeney
Mr. Inslee	Mrs. Biggert
Ms. Schakowsky	Mr. Terry
Mr. Moore	Mr. Toomey
Mrs. Jones	Mr. Maloney
Mr. Capuano	Mr. Sherman
Mr. Forbes	Mr. Goode

Rollcall No. 5

Date: November 9, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Mr. Royce.

Description of Motion: Deletes entire section 6 of the bill. Section 6 provides for the direct purchase of federal reinsurance contracts by eligible state funds.

Results: Defeated: Ayes: 19, Nays 22.

YEAS	NAYS
Mr. Bachus	Mr. Leach
Mr. Castle	Mr. McCollum
Mr. Royce	Mr. Bereuter
Mr. Metcalf	Mr. Baker
Mr. Barr	Mr. Lazio
Dr. Paul	Mr. King
Mr. Ryun	Mr. Campbell
Mr. Hill	Mrs. Kelly
Mr. Ryan	Mr. Cook
Mr. Ose	Mr. Riley
Mr. Toomey	Mrs. Biggert
Mr. LaFalce	Mr. Terry
Mr. Vento	Mr. Bentsen
Mr. Kanjorski	Mr. Maloney
Mrs. Maloney	Ms. Hooley
Mr. Watt	Mr. Weygand
Mr. Meeks	Mr. Sherman
Ms. Schakowsky	Mr. Sandlin
Mr. Capuano	Mr. Goode
	Mr. Inslee
	Mr. Moore
	Mr. Forbes

Rollcall No. 6

Date: November 10, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Dr. Paul.

Description of Measure: Adds a "market pricing of premiums" requirement to the eligibility section for participation in the new federal program.

Results: Defeated: Ayes 13, Nays 22.

YEAS	NAYS
Mr. Bachus	Mr. Leach
Mr. Castle	Mr. McCollum
Mr. Royce	Mr. Bereuter
Mr. Barr	Mr. Baker
Dr. Paul	Mr. Lazio
Mr. Ryun	Mr. King
Mr. Ryan	Mr. Campbell
Mr. Toomey	Mr. Lucas
Mr. LaFalce	Mr. Ney
Mr. Frank	Mrs. Kelly
Mr. Kanjorski	Dr. Weldon
Mr. Sanders	Mr. Riley
Mr. Moore	Mrs. Biggert
	Mr. Terry
	Mr. Green
	Ms. Waters
	Mr. Watt
	Ms. Hooley
	Mr. Sherman
	Ms. Schakowsky
	Mr. Capuano
	Mr. Forbes

Rollcall No. 7

Date: November 10, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Mr. Hill.

Description of Measure: Requires that 80 percent of coverage from the reinsurance authorized in this legislation be applied towards underwriting new businesses.

Results: Defeated: Ayes 8, Nays 19.

YEAS	NAYS
Mr. Royce	Mr. Leach
Mr. Barr	Mr. McCollum
Mr. Hill	Mrs. Roukema
Mr. Toomey	Mr. Bereuter
Mr. LaFalce	Mr. Baker
Ms. Schakowsky	Mr. Lazio
Mr. Moore	Mr. Campbell
Mr. Gonzalez	Mr. Lucas
	Mr. Ryun
	Mr. Sweeney
	Mrs. Biggert
	Mr. Green
	Mr. Bentsen
	Mr. Maloney
	Ms. Hooley
	Mr. Weygand
	Mr. Goode
	Mr. Capuano
	Mr. Forbes

Rollcall No. 8

Date: November 10, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Mr. Capuano.

Description of Measure: Requires, as a condition for an insurance company entering into a contract for federal natural disaster reinsurance, to compile and submit information on insurance applicants' and insurance policyholders' race, gender, and other information to make it possible to compare the availability and affordability of insurance coverage in a Metropolitan Statistical Area.

Results: Defeated: Ayes 13, Nays 20.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Ms. Waters	Mr. McCollum
Mr. Sanders	Mrs. Roukema
Ms. Velazquez	Mr. Bereuter
Mr. Watt	Mr. Baker
Mr. Bentsen	Mr. Lazio
Ms. Hooley	Mr. Campbell
Mr. Weygand	Mr. Royce
Mr. Inslee	Mr. Lucas
Ms. Schakowsky	Mr. Barr
Mr. Moore	Mrs. Kelly
Mr. Gonzalez	Dr. Weldon
Mr. Capuano	Mr. Cook
	Mr. Sweeney
	Mrs. Biggert
	Mr. Green
	Mr. Toomey
	Mr. Maloney
	Mr. Goode
	Mr. Forbes

Rollcall No. 9

Date: November 10, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Mr. Capuano.

Description of Measure: Prohibits Treasury from making reinsurance contracts available for purchase to state-operated programs or through regional auction if participating insurers or reinsurers have been found in violation of the Fair Housing Act either through adjudication or through a consent decree.

Results: Passed: Ayes 25, Nays 22.

YEAS	NAYS
Mr. Campbell	Mr. Leach
Mr. LaFalce	Mr. McCollum
Mr. Vento	Mrs. Roukema
Mr. Kanjorski	Mr. Bereuter
Ms. Waters	Mr. Baker
Mr. Sanders	Mr. Lazio
Mrs. Maloney	Mr. Castle
Mr. Gutierrez	Mr. King
Ms. Velazquez	Mr. Royce
Mr. Watt	Mr. Lucas
Mr. Ackerman	Mr. Barr
Mr. Bentsen	Mrs. Kelly
Mr. Maloney	Dr. Weldon
Ms. Hooley	Mr. Ryun
Ms. Carson	Mr. Cook
Mr. Weygand	Mr. Riley
Mr. Sandlin	Mr. Ryan
Mr. Meeks	Mr. Sweeney
Mr. Mascara	Mrs. Biggert
Ms. Schakowsky	Mr. Green
Mr. Moore	Mr. Toomey
Mr. Gonzalez	Mr. Goode
Mrs. Jones	
Mr. Capuano	
Mr. Forbes	

Rollcall No. 10

Date: November 10, 1999.

Measure: Homeowners' Insurance Availability Act of 1999.

Motion by: Messrs. Sanders, Royce, and Hill.

Description: (Substitutes Amendment) Strikes entire legislation, and in its place, requires the Department of the Treasury to conduct a study on the availability and affordability of homeowners' insurance for natural disasters including an analysis of legislative proposals and recommendations.

Results: Defeated: Ayes 23, Nays 31.

YEAS	NAYS
Mr. Bachus	Mr. Leach
Mr. Castle	Mr. McCollum
Mr. Royce	Mrs. Roukema
Mr. Barr	Mr. Bereuter
Dr. Paul	Mr. Baker
Mr. Ryun	Mr. Lazio
Mr. Hill	Mr. King
Mr. Ryan	Mr. Campbell
Mr. Toomey	Mr. Lucas
Mr. LaFalce	Mr. Ney
Mr. Vento	Mrs. Kelly
Mr. Frank	Dr. Weldon
Mr. Kanjorski	Mr. Cook
Ms. Waters	Mr. Riley
Mr. Sanders	Mr. Jones
Mrs. Maloney	Mr. Sweeney
Mr. Gutierrez	Mrs. Biggert
Mr. Watt	Mr. Terry
Mr. Inslee	Mr. Green
Ms. Schakowsky	Mr. Ackerman
Mr. Gonzalez	Mr. Bentsen
Mrs. Jones	Mr. Maloney
Mr. Capuano	Ms. Hooley
	Mr. Weygand
	Mr. Sherman
	Mr. Sandlin
	Mr. Meeks
	Mr. Goode
	Mr. Mascara
	Mr. Moore
	Mr. Forbes

After the Committee Print, as amended, was adopted by voice vote, H.R. 21 was called up for Committee consideration. A motion to strike everything after the enacting clause in H.R. 21 and insert in lieu thereof the Committee Print was approved by voice vote. A motion to adopt H.R. 21 and favorably report the bill, as amended, to the House was approved by a recorded vote of 34 Ayes and 18 Nays on November 10, 1999.

YEAS	NAYS
Mr. Leach	Mr. Bachus
Mr. McCollum	Mr. Castle
Mrs. Roukema	Mr. Royce
Mr. Bereuter	Mr. Barr
Mr. Baker	Dr. Paul
Mr. Lazio	Mr. Ryun
Mr. King	Mr. Hill
Mr. Campbell	Mr. Toomey
Mr. Ney	Mr. LaFalce
Mrs. Kelly	Mr. Frank
Dr. Weldon	Mr. Kanjorski
Mr. Cook	Ms. Waters
Mr. Riley	Mr. Sanders
Mr. Jones	Ms. Carson
Mr. Ryan	Mr. Inslee
Mr. Sweeney	Ms. Schakowsky
Mrs. Biggert	Mr. Gonzalez
Mr. Terry	Mrs. Jones
Mr. Green	
Mr. Vento	
Mrs. Maloney	
Mr. Watt	
Mr. Ackerman	
Mr. Bentsen	
Mr. Maloney	
Ms. Hooley	
Mr. Weygand	
Mr. Sherman	
Mr. Meeks	
Mr. Goode	
Mr. Mascara	
Mr. Moore	
Mr. Capuano	
Mr. Forbes	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings and recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI (and clause 4(c)(2) of rule X) of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the constitutional authority for Congress to enact this legislation is derived from the general welfare clause (Article I, Sec. 8).

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority for increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COSTS ESTIMATE AND UNFUNDED MANDATE ANALYSIS

The cost estimate pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974 is attached herewith:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 9, 2000.

Hon. JAMES A. LEACH,
Chairman, Committee on Banking and Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 21, the Homeowners' Insurance Availability Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 21—Homeowners' Insurance Availability Act of 1999

SUMMARY

The purpose of H.R. 21 is to increase the availability and affordability of homeowners' insurance for natural disasters by creating a federal disaster reinsurance program. Reinsurance is insurance for insurers; it allows insurers to transfer risk to other entities. H.R. 21 would require the Secretary of the Treasury to offer reinsurance to eligible state-sponsored insurance organizations and private parties (such as insurance companies). The reinsurance program would expire in 10 years unless the Secretary determined that continuation of the program was necessary, in which case the Secretary could extend the program for five additional years.

While the budgetary impact of this 10- to 15-year legislation is uncertain, CBO estimates that enacting the bill would probably increase direct spending over the 2000–2010 period on an expected value basis. Over the 10- to 15-year life of this program, we expect that federal payments for disaster insurance claims would exceed the premiums collected from state programs and private insurance companies for providing disaster reinsurance. Because the bill would affect direct spending, pay-as-you-go procedures would apply.

Two factors make the budgetary impact of H.R. 21 highly uncertain. First, under this bill the Secretary of the Treasury would have considerable discretion to implement the program. Because of that discretion, it is not possible to determine the total amount of reinsurance coverage that might be sold, and thus the potential liability for disaster coverage that the Treasury might face. Although the bill would direct the Secretary to attempt to limit the government's total liability to $25 billion annually, there would be no enforcement of this limitation. Second, because the frequency and severity of future catastrophic events are exceedingly difficult to estimate, it is unlikely that the federal government would be able to establish prices for disaster reinsurance that would fully cover the potential future costs of these financial obligations.

H.R. 21 also would affect discretionary spending. The reinsurance program might reduce discretionary spending by eliminating the need for some potential future federal payments to homeowners for disaster assistance, but probably not by enough to offset the large payments for which the federal government could be liable. H.R. 21 would authorize the appropriation of $2 million in fiscal year 2000 and additional sums necessary to cover the costs of establishing and operating an advisory commission and the Secretary's initial administrative expenses. Assuming the appropriation of the necessary amounts, CBO estimates that implementing these and other provisions of the bill would increase discretionary spending by $1 million in each of fiscal years 2000 and 2001 and by less than $500,000 annually in the remaining years of the program.

H.R. 21 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any costs incurred by state governments would result from the voluntary purchase of the federal disaster reinsurance that would be established by this bill.

Description of the bill's major provisions

Under H.R. 21, the Secretary of the Treasury would offer to sell reinsurance both to eligible state insurance organizations and private parties (such as insurance companies). Private parties could bid for reinsurance through annual auctions conducted in at least six regions of the country to be defined by the Secretary. Reinsurance would cover damage to residential property from earthquakes, fire, tsunami, cyclones (including hurricanes and typhoons), tornadoes, and volcanic eruptions, but only if the total damage within the state or region exceeds certain thresholds. in general, the reinsurance would cover relatively rare and very damaging natural catastrophes.

The reinsurance would cover only a single peril and last for a term determined by the Secretary. All payments would be made from the reinsurance trust fund established under the bill. If accumulated sales receipts and investment income are insufficient to pay claims and expenses, H.R. 21 would authorize the Secretary to borrow such sums as would be necessary to cover any shortfall. The bill would require the Secretary to repay any borrowing with receipts from future sales of reinsurance contracts.

H.R. 21 contains several provisions intended to control federal spending under the reinsurance program. These provisions would:

Establish a goal of limiting the federal government's maximum liability to pay reinsurance claims;

Define thresholds for minimum insured losses that must be sustained in each state or region before contract holders could receive payments; and

Require prices for reinsurance to include risk loads.

Maximum Federal liability to pay reinsurance claims

Two provisions in the bill attempt to limit the government's liability to pay reinsurance claims. First, section 9 would set a goal of limiting the aggregate liability under all reinsurance sold in any single year to $25 billion. The bill would not, however, provide a means to enforce the goal. Second, section 9 would establish an upper limit on the amount of reinsurance that could be sold, and therefore, would limit potential payments. For each state or region, the amount of eligible losses that could be reinsured would be limited to half of the difference between the Secretary's estimates of losses projected from a one-in-500-year event and those projected from a one-in-100-year event. Regardless of the uncertainty the Secretary would face in making these estimates, whatever levels he or she sets under this provision would define an upper limit on reinsurance payments in each state or region.

Minimum insured loss thresholds

Under H.R. 21, payments for reinsurance coverage would begin once certain thresholds of insured losses, determined by the Secretary of the Treasury, have been reached. In the case of reinsurance sold directly to eligible state-sponsored disaster insurance organizations, the threshold would equal the greatest of (1) an amount between $2 billion and $5 billion (as specified by the Secretary), (2) the claims-paying capacity of the organization, or (3) an amount within the range defined by the Secretary's estimates of insured losses from a one-in-100-year event and a one-in-250-year event. The Secretary would specify one of these thresholds in each state or region where reinsurance is sold. In general, the highest of these three thresholds would apply, but the Secretary could set a lower threshold under certain circumstances.

For contracts sold at regional auctions, federal payments on reinsurance contracts would begin once aggregate losses to the insurance industry in the region where the auction took place exceed the greater of an amount between $2 billion and $5 billion (as specified by the Secretary) or an amount between the Secretary's estimate of losses projected from a one-in-100-year event and a one-in-250-

year event. Under certain conditions, the Secretary could adjust the damage threshold established for each region.

Adding risk loads to the price of reinsurance

H.R. 21 would establish the National Commission on Catastrophe Risks and Insurance Losses to perform actuarial analyses and recommend prices for reinsurance to the Secretary. Prices would include a risk-based price, a risk load at least equal to the risk-based price, and an amount to cover administrative costs. The risk-based price would reflect the estimate of the average annual payout of the reinsurance contract, taking into account the estimated probabilities of catastrophic events of the relevant sizes. In private disaster reinsurance markets, a risk load is an amount added to the risk-based price to compensate the reinsurer for the variability of payments in any given year around the long-run average, and for the uncertainty surrounding available estimates of the average annual payout itself. H.R. 21 would require a minimum risk load for each contract of at least 100 percent of its risk-based price.

Cost to the Federal Government

CBO estimates that enacting H.R. 21 probably would increase direct spending over the 10- to 15-year life of the program. We cannot quantify the amount nor the timing of this expected additional spending.

Assuming appropriation of the necessary amounts, implementing the bill would increase discretionary spending by $1 million in each of fiscal years 2000 and 2001 and by less than $500,000 annually over the remaining years of the program. Other discretionary federal payments for disaster assistance might be reduced somewhat as a result of enacting H.R. 21, but probably not by enough to offset the large payments for which the federal government could be liable.

Direct spending (including offsetting receipts)

Over the life of the program, CBO estimates that enacting the bill would likely result in a net increase in direct spending. Because of the lack of historical data on which to base actuarial estimates of losses from catastrophic events and the potential for political and consumer pressures to keep reinsurance coverage affordable, CBO expects that reinsurance probably would be priced too low. CBO also expects that authorizing the Secretary to require lower loss thresholds in the first several years of the program and conducting the program on a regional basis would increase the probability that the contracts would yield one or more payments during the program's lifetime.

Likelihood That Reinsurance Would Be Priced Too Low.—If the Secretary had all relevant information needed to price reinsurance to break even, the expected cost of the program would be zero, or it would generate net receipts, even though the actual cost could be higher or lower depending on the random occurrence of covered events. The actuarial estimates of catastrophe risk that would be used under the bill as the basis for setting minimum prices, how-

ever, do not provide sufficient information to accurately price contracts.

Actuarial estimates of catastrophic risk are backward-looking, based on available historical data. Because catastrophic events are infrequent, historical data used by models that estimate losses from these events, are very limited. Thus, CBO has little confidence in he accuracy of actuarial estimates of catastrophe losses that would be used to set prices for reinsurance.

Private reinsurers respond to the uncertainty surrounding actuarial estimates of losses by including substantial "risk loads" in their prices, in part to account for the likelihood that available historical data do not fully capture current catastrophe risks. Risk loads observed in private transactions for disaster reinsurance against infrequent events, similar to those that would be covered under H.R. 21, are typically four to six times but sometimes exceed 10 times actuarially expected losses. Although beliefs about the inaccuracy of actuarial estimates are not the only factors driving such high risk loads, evidence suggests that the additional compensation that private reinsurers require for taking on catastrophic risk is much larger than 100-percent risk load required as a minimum in the bill.

Moreover, consumer and political pressures probably would create a strong incentive to keep reinsurance prices low to address the perceived price and availability problems in the market for homeowners' insurance. Similarly, although bidding could drive the prices of contracts sold at auctions to their true break-even value even if their minimum prices were set too low, CBO cannot be confident that the contracts would attract sufficient demand to drive up their prices.

Finally, even if the government were just as likely to set some contract prices too high as too low, the implications for the budget would not be symmetric. This is because low contract prices would encourage sales while high contract prices would discourage sales. Because the government would tend to sell more reinsurance at a loss than at a gain, the result would be a net loss.

Likelihood of Reinsurance Payments.—Although the Secretary would have the authority to set lower thresholds for minimum insured losses during the first few years of the program, payments under H.R. 21 generally would cover only insured losses that exceed those expected from a one-in-100-year event. It is possible, however, that the claims-paying capacity of state disaster insurance organizations may fall well short of this level. Since the Secretary would be authorized to lower the loss thresholds required for payouts from the state contracts in the first five to seven years of the program if claims-paying capacities are too low, reinsurance sold to state organizations during that time would be likely to cover events that occur more frequently than once every 100 years.

In addition, the annual probability of a one-in-100-year event may be more than 1 percent, either because the historical data underlying the estimates of the frequency of events are inadequate or because the timing of such events is affected by cyclical factors. Furthermore, by dividing the nation into at least six regions, the bill could increase the probability that the federal government would make reinsurance payments. Events with an annual prob-

ability of 1 percent or more annual probability would have at least 60 chances to occur over the life of the program—one per year in each of the six or more regions created. For these reasons, CBO believes that there is a significant probability of one or more payments during the program's lifetime.

Spending subject to appropriation

The bill would authorize additional discretionary spending in 2000 and 2001. The reinsurance program also could lead to a reduction in the demand for some discretionary spending in future years, but CBO cannot estimate the timing or magnitude of any such impact. Any reduction in discretionary spending would depend on future appropriation actions.

Estimated Discretionary Costs.—H.R. 21 would authorize the appropriation of $2 million in 2000 and such sums as may be necessary in later years to establish and operate the federal advisory commission and to cover the Secretary's administrative expenses. Assuming appropriation of the authorized amounts, CBO estimates that these activities would cost $1 million in each of fiscal years 2000 and 2001, but would not significantly affect federal spending thereafter.

H.R. 21 also would direct the General Accounting Office (GAO) to perform an annual audit of the auctions for disaster reinsurance contracts established under the bill and to prepare a study on the availability and cost of insurance against flooding resulting from hurricanes. Based on information from GAO, CBO estimates that the cost of these activities would be less than $500,000 in any given year.

Potential Discretionary Savings.—Implementing the reinsurance program established under the bill could reduce the need for future appropriations to the Federal Emergency Management Agency (FEMA) to provide disaster relief to homeowners for two reasons. First, the program would help private insurers manage more catastrophe risk at less cost. If insurers translate this lower risk into either lower premiums or more generous policies for homeowners, the amount of private disaster coverage could expand and fewer homeowners may need assistance from FEMA in the event of a catastrophe. CBO cannot estimate the likelihood or magnitude of any such savings because we cannot predict the extent that homeowners coverage might expand or how any such expansion might reduce spending by FEMA.

Second, H.R. 21 would increase funding for programs to mitigate natural disasters in the communities where reinsurance is sold. This emphasis on mitigation might reduce homeowners' need for disaster assistance in the future, but CBO cannot estimate the timing or size of any such savings. Though recent studies have provided evidence that certain mitigation efforts can be effective, the magnitude of any such savings to the federal government remains speculative.

The homeowners' disaster reinsurance program established under H.R. 21 would not affect federal spending for other disaster assistance programs, such as catastrophic crop insurance, the Emergency Conservation Program, the Small Business Administration's disaster loan program, and FEMA's public assistance pro-

gram to replace and repair damages to bridges, roads, and other infrastructure. These programs benefit individuals or organizations that would not be affected by the homeowner reinsurance offered under H.R. 21.

Pay-as-you-go considerations

The Balanced Budget and Emergency Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO expects that enacting H.R. 21 would increase direct spending, but we cannot estimate the magnitude or timing of such spending.

Estimated impact on state, local, and tribal governments

H.R. 21 contains no intergovernmental mandates as defined in UMRA and would benefit states that choose to participate in the reinsurance program established by this bill. Eligible state-sponsored insurance organizations could purchase federal reinsurance at an established price or at regional auctions. Other state insurance organizations could purchase federal reinsurance only at regional auctions. Purchasing the federal reinsurance would transfer some of the risk associated with large-scale natural disasters to the federal government. Any costs incurred by state governments would result from voluntary participation in this program.

Estimated impact on the private sector

This bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Mega Carroll, Perry Beider, Timothy VandenBerg, Kim Kowalewski, and David Torregrosa. Impact on State, Local, and Tribal Governments: Shelley Finlayson. Impact on the Private Sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of Section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under Section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

SECTION-BY-SECTION

Section 1: Title cited as "Homeowners' Insurance Availability Act of 1999".

Section 2: Congressional Findings that rising costs from natural disasters have placed a strain on the homeowners' insurance market impacting the ability of consumers to adequately insure their homes, and that it is necessary to provide, on a temporary basis, a Federal reinsurance programs that will promote stability in the private homeowners' insurance market in the short term and en-

courage the growth of reinsurance capacity by the private and capital markets as soon as possible.

Section 3: Program Authority to the Secretary of Treasury to provide a Federal reinsurance program through reinsurance contracts to eligible purchasers under section 6 (state programs) and section 7 (regional contracts) so long as the private sector is not displaced.

Section 4: Qualified Lines of Coverage provide specifically for residential property losses to homes, condominiums, cooperatives and contents of apartment buildings.

Section 5: Covered Perils include (i) earthquakes, (ii) perils ensuing from earthquakes (fire and tsunami), (iii) tropical cyclones (including hurricanes and typhoons) where the maximum sustained winds are equal to or greater than 74 miles per hour, (iv) tornadoes, and (v) volcanic eruptions.

Section 6: Contracts for Reinsurance Coverage for Eligible State Programs are made available to state-operated insurance and reinsurance programs if the state program covers residential losses; is structured to be exempt from Federal taxation; covers a single peril; does not provide for profit to any insurer; and, includes a mitigation investment of not less than 10% of the program's net investment income (5% if the Secretary determines, pursuant to a request from the state insurance commissioner, that a 10% requirement would jeopardize the actuarial soundness of the state program). For state programs beginning after January 1, 1999 (all other state programs two years after date of enactment) state programs must not cross-subsidize between separate property and casualty lines unless the elimination of such activity for an existing program would negatively impact program eligibility under section 6(a)(2); must provide that for coverage under the program, premium rates must be, at a minimum, sufficient to cover the full actuarial costs of such coverage; and, must provide authorization to the State insurance commissioner to terminate the state program when it is no longer necessary to ensure availability of homeowners' insurance.

The state programs shall certify to the Secretary and follow regulations promulgated by the Secretary, in consultation with the National Commission. The regulations shall include requirements that state programs have public members on its board of directors or advisory board; ensure that state coverage does not supplant the private insurance market; provide adequate deductibles; provide a non-discriminatory clause; provide that new construction meet applicable building, fire, and safety codes; ensure consistency with the Federal Emergency Management Agency guidelines; programs take into account mitigation efforts; and other requirements considered necessary by the Secretary.

Terms of the contracts may not exceed one year or other term determined by the Secretary, with claim payments only to eligible state programs and a payout at the occurrence and level where disaster costs exceed the retained losses noted in Section 8.

The contract shall cover eligible losses from multiple events during the term of the contract. Qualified losses include only property covered under the contract that is reported to the state program within a 3 year period from the natural disaster event. Pricing is established by the Secretary, in consultation with the National

Independent Commission on Catastrophe Risks and Insurance Loss Costs, established at a level designed to fairly compensate taxpayers for the risks borne, taking into consideration the developmental stage of models and private market capacity, and designed to provide for program self-sufficiency. The price of the contracts shall consist of a risk-based price not less than the anticipated payout of the contract according to the Commission's actuarial analysis and recommendations, a risk load at least equal to the risk-based price and administrative costs. The contract shall provide purchasers an opportunity to purchase additional contracts for identical coverage for the remaining term of the initial contract if the coverage under the initial contract is exhausted to become effective 15 days after the date of purchase.

Section 6(c) requires the Secretary to give private market reinsurance entities a "right of first refusal" in Federal reinsurance offered for direct sale to state-operated programs. If qualifying private market entities are willing to offer coverage at rates and terms that would be substantially similar to coverage offered by the Federal government as approved by the Secretary, Treasury may not offer such coverage during the relevant contract cycle.

Section 7: Auction of Contracts for Reinsurance Coverage shall be carried out by Treasury to provide for auctioning of contracts to private insurers, reinsurers and state insurance and reinsurance programs. Auctions shall provide for coverage on a regional basis, in no less than six, with separate regions including all or part of Florida, and all or part of California. The Secretary is directed to attempt to create regions of similar risk, and not combine state at less risk of losses to covered perils with states at higher risk.

In auctioning the contracts, Treasury shall set a reserve price as the lowest base price of the contract based on the Commission's recommendations to include a risk-based price not less than the anticipated payout of the contract according to the Commission's actuarial analysis and recommendations, a risk load at least equal to the risk-based price and administrative costs also taking into account administrative costs and mitigation efforts.

Each contract purchaser, other than state-operated programs, are required to provide an additional amount of up to 5% of the contract purchase price for mitigation activities to communities located located within the covered state.

Terms of the contract may not exceed one year or other term determined by the Secretary, are fully transferable and divisible, cover eligible losses from multiple events during the term of the contract, provide for payment above the minimum level of retained losses by region as specified in section 8, provide purchasers an opportunity to purchase additional contracts for identical coverage for the remaining term of the initial contract if the coverage under the initial contract is exhausted to become effective 15 days after the date of purchase, and require the purchaser to notify the Secretary of any resale, transfer, assignment or division and the subsequent compensation paid.

GAO is required to conduct an audit of prices for contracts made available under the auction program.

Section 8: Anti-Redlining Requirement prohibits the Secretary from making Federal reinsurance contracts available for purchase

unless the purchaser certifies that the insurer or reinsurer has not been adjudicated in a Federal court premised upon a violation of the Fair Housing Act.

Section 9: Minimum Level of Retained Losses and Maximum Federal Liability require minimum levels of retained losses for state programs at a level that is not less than the greater of an amount between $2 billion and $5 billion in residential losses, the current claims paying capacity or an amount that is within a range between an amount that equal to a loss associated with an event occurring once in 100 years and once in 250 years. In cases of existing state programs that have a claims paying capacity greater than $2 billion but less than an amount equal to a loss associated with a one in 100 year event, the state shall provide a written agreement to transition an increase of retained losses during a five year period, with an extension for 2 additional one year periods.

For state programs created after January 1, 1999, the Secretary, in consultation with the National Commission on Catastrophe Risks and Insurance Loss Costs, may establish minimum retained loss levels below $2 billion in an amount equal to losses associated with a one in 100 year event, except adjustments shall be made for a five year period to increase to the minimum level of $2 billion.

In cases where a state program experiences an accumulation of events that exceed the claims paying capacity in that state, the Secretary may reduce retained loss triggers, but not less than $2 billion, so long as the retained loss levels are increased within 5 years.

Auction contracts will not be available through any region unless the auction conducted sustains a cumulative amount of losses greater than an amount between $2 billion and $5 billion or an amount that is within a range between an amount that equal to a loss associated with an event occurring once in 100 years and once in 250 years

Treasury may annually raise the minimum level of retained losses for state programs or regions to reflect the growth in a state program's claims paying capacity or the growth of capacity in the private market.

The claims paying capacity is defined by taking into consideration the claims paying capacity as determined by the state program; retained losses to private insurers assigned by the State insurance commissioner; the cash surplus of the program; and the lines of credit, reinsurance, and other financing mechanisms of the program established by law.

In all cases, the Secretary may sell no more contracts than would likely accumulate in excess of an annual liability of $25 billion. States or regions may annually purchase no more than an amount that is greater than the difference between losses likely to occur from a one in 500 year event and losses from a one in 100 year event.

Treasury may not make available for purchase reinsurance contracts that would pay out more than 50 percent of eligible losses under contract for state programs or by region.

Section 10: Disaster Reinsurance Fund is established within the Treasury Department to accept proceeds from the sale of contracts, borrowed funds, investments or other amounts.

Section 11: National Commission of Catastrophe Risks and Insurance Loss Costs is established with the sole purpose of advising the Secretary regarding estimating the loss costs associated with reinsurance contracts under the Act. The Act provides an appropriation of $1 million for Commission startup costs and $1 million for program operations, with cost offsets derived from contract proceeds. Five (5) members are to be appointed to the Commission, by the Secretary. Commission members will have no personal, professional, or financial interest at stake in the deliberations of the Commission. At least one member shall represent a nationally recognized consumer organization.

Section 12: Definitions to provide definitions for certain terms in the Act.

Section 13: Regulation.

Section 14: Termination is required of this Act after 10 years from enactment. In the event that the Secretary, in consultation with the Commission, determines that there is insufficient growth of capacity in the private homeowners' insurance market, this Act may be extended for an additional five year term.

Section 15: Annual Study of Cost and Availability of Disaster Insurance and Program Need is required of the Secretary on an annual basis reporting the cost and availability of homeowners' insurance for losses resulting from catastrophic natural disasters. The first report shall be due two years after the date of enactment.

Section 16: GAO Study of Hurricane Related Flooding is required on the availability and adequacy of flood insurance coverage for residential losses and other properties caused by hurricane-related flooding to be submitted to Congress not later than 5 months from the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL

This bill does not contain changes to existing law and therefore no comparative print of how this bill affects current law is included, pursuant to clause 3 of rule XIII of the Rules of the House of Representatives.

DISSENTING VIEWS

Mr. Chairman, I regrettably must express my dissenting comments on H.R. 21, the "Homeowners' Insurance Availability Act of 1999." This is a complicated legislative proposal on which Members of good will on both sides of the aisle disagree. I believe the division of opinion among members is a product of legitimate differences on whether there is a catastrophic insurance availability crisis and whether there should be a federal role in providing reinsurance.

I agree with the Chairman that an implicit liability already exists for the federal government should a catastrophic disaster strike a vital area of our nation. To the extent this bill would make that liability explicit and introduce private dollars in the form of premiums to assist in a federal relief effort, I applaud the approach. However, the fundamental question is whether H.R. 21 is truly a federal backstop or whether it would interfere with and subsidize existing private insurance markets. I have come to the conclusion that there is more independent evidence that the latter is true.

A 1999 Wharton School Catastrophe Risk Management Study analyzing the capacity of the U.S. property insurance industry's ability to pay for a catastrophe concluded that surpluses among the primary insurers alone could pay at least 98.6% of a $20 billion loss. For a catastrophe of $100 billion, the industry could pay for at least 92.8% of that loss. The report concludes that the gaps in catastrophic risk financing are presently not sufficient to justify federal government intervention in private insurance markets in the form of catastrophe reinsurance. Furthermore, according to A.M. Best, the insurance industry surplus stands at $332.3 billion, an increase from 77% since 1994 after the insurance industry suffered losses from Hurricane Andrew and the Northridge Earthquake. The policy holder surplus from the top three homeowners insurers (State Farm, Allstate, and Farmers Insurance) currently stands at $69.7 billion, more than doubling their surpluses over the last 6 years. These same three companies are still making a sizable profit. In 1997, they netted $9.5 billion and in 1998, they netted $10 billion. Putting aside the resources available among primary insurers, the reinsurance industry believes they have the capacity to handle a $20 billion loss in any region of the country. These capacity figures demonstrate that a 1 in 100 year catastrophic event is well within the range of the private sector to insure. If a federal backstop is needed, we should be focusing on the 1 in 500 or 1 in 1,000 year event.

Aside from the issue of the existing private sector capacity, I believe the approach in H.R. 21 is flawed because it fails to erect adequate safeguards for the disaster premiums it would collect. Throughout our nation's history, the Congress and the Executive

Branch have demonstrated a propensity for funding short term spending priorities at the expense of long term commitments it has already made.

Congress should focus more attention on alternative proposals including, but not limited to, removing barriers in current accounting and tax laws that prohibit insurers from setting money aside for future catastrophic events. Such legislation has been introduced and referred to the House Ways and Means Committee. I encourage the House Ways and Means Committee to complete its review of this proposal so at a minimum both approaches can be debated on the house floor.

H.R. 21 could increase the federal government's liability by as much as $25 billion annually. That is almost as much as the federal government spends annually on programs operated by the U.S. Department of Housing and Urban Development. Members need to have a full understanding of their options before they commit taxpayer funds to H.R. 21's venture. H.R. 21 has drawn opposition from countless taxpayer groups, environmental groups, consumer groups, the reinsurance industry, and many in the property and casualty industry. The Congressional Budget Office has expressed concerns about the underpricing of these federal reinsurance contracts by as much as one-third what private reinsurers would charge. Furthermore, Congress does not have the benefit of the National Association of Insurance Commissioners' opinion. In my home state of Delaware, the Delaware Insurance Commissioner's office was unable to render an opinion of the proposal. Clearly, there is not sufficient consensus to justify this $25 billion federal expenditure.

Mr. Chairman, you have always shown tremendous regard for fairness in the legislative process. As H.R. 21 moves forward, I hope you will continue to provide an opportunity for Members of your caucus and the Democratic Caucus to express their concerns about this bill.

MICHAEL N. CASTLE.

DISSENTING VIEWS OF HON. RON PAUL

The sponsors of the bill have brought to light problems some people have acquiring disaster insurance. There are several causes and different approaches to a solution. HR 2749, Policyholder Disaster Protection Act of 1999, which establishes tax-deferred catastrophe reserves, is probably the best federal, governmental approach. HR 21 is not only unnecessary but would contribute to rather than solve the alleged problem of insufficient reinsurance capacity.

"There is currently an overabundance of reinsurance in the U.S. * * * The capacity or reinsurance has risen and insurance companies can now purchase traditional catastrophe excess coverage above $500 million per event [Nov. 1998], as compared to $200 million in 1992," testified Franklin W. Nutter, Reinsurance Association of America, at the July 30, 1999 hearing. "The cost of catastrophe reinsurance is very low and has in fact dropped for five years in a row * * * Paragon's [Risk Management Services] report concludes that global catastrophe pricing remains under pressure as capacity exceeds demands in all regions."

"This 'capacity gap' [scarcity of private reinsurance to cover worst-case disasters] can best be described as an affordability problem. In simplest terms, the cost of capital—which governs the price of private reinsurance—is considerably higher than the premiums that can be collected from homeowners based on the actuarial probability of loss. As a result, there is a limit to how much reinsurance that primary insurers can realistically purchase," concurred Jack F. Weber, Home Insurance Federation of America. "In the case of mortgage markets, this fear of catastrophic loss is kept in check because of support from the U.S. government in the form of credit guarantees [which ultimately] keeps the system operating at maximum efficiency."

Since there are several causes for the lack of adequate availability of insurance in some areas, I tried to address one cause for the lack of availability of insurance that may have been overlooked when drafting the bill. Roger Joslin, State Farm Fire and Casualty Company, testified at the July 30, 1999 hearing, "One factor discouraging companies from writing in these [high risk 'break the bank'] areas is politically motivated rate suppression." My amendment addressed the "politically motivated rate suppression" reason for the lack of availability insurance that concerns many of our constituents.

I offered an amendment adding a requirement to eligibility concerning the market pricing of premiums such that no state would be eligible if it requires prior approval of the amount of premiums charged for insurance coverage. The amendment aimed to lessen the incentives to "politicize" the process and increase the incentives to offer disaster insurance to our constituents.

More importantly, federal reinsurance fails to address underlying regulatory and tax policies that have limited the amount of coverage that can be offered and underwritten by natural disaster insurers in the private market. This initial government intervention in the price market is the cause of much of the problem, and it is what must be addressed.

Florida, for example, restricts the premium rates that insurers may charge for homeowners insurance. Though perhaps intended to benefit consumers living in disaster-prone areas, this type of governmental rate regulation often discourages insurers from offering greater coverage to potential policyholders. Federal reinsurance would only help states disguise some of the consequences of such adverse regulatory policies. Congress should, of course, recognize Constitutional restraints and not interfere in state regulation of insurance.

It should also resist the impulse to relieve these same states from the consequences of their own misguided regulation. Federal tax policies have likewise added to the funding problems for private insurers covering natural disaster risks. Federal tax policy ignores the nature of disasters as long-term risks. Currently, all insurer income in excess of annual expenses is considered profit and is subject to federal income tax. This undermines the ability of insurers to set aside money for that very rainy day when a hurricane causes unusually costly damages.

By subsidizing insurance in high risk areas, the bill would have unintended consequences both environmental and human. High risk areas are often in environmentally fragile areas which would be put in greater environmental jeopardy under this bill than under a free market. The human toll could be great: since people judge the risks they will take using insurance rates as a guide, the distortion of this pricing system would have the effect of encouraging families to remain in or move to high risk areas and add a marginal disincentive to move to or remain in lower risk areas; thus, when the next natural disaster hits, more people will be put in danger and the casualties will likely be higher. A situation which will undoubtedly be used to justify the next "round" of intervention!

A better solution to the problem that government intervention caused would be to reduce or remove the initial artificial intervention in the market. Encouraging the further growth and development of the private insurance markets would, in the end, be the best way to address the problems currently facing homeowners in disaster-prone areas. To improve the private market for disaster insurance, one must alleviate or eliminate the governmental regulatory intervention distorting the conditions under which private insurers must operate.

A new federal reinsurance program would move us in the wrong direction. Such a new federal regulatory intervention would only distort the market further and excerbate the problems presented by natural disasters.

RON PAUL.

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