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# FINANCIAL SERVICES AND E-COMMERCE

## THE WIND VERSUS FLOOD DISPUTE: A CONFLICT OF INTEREST

### A REVIEW OF THE PROPOSED MULTIPLE INSURANCE ACT OF 2009

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When Hurricane Katrina struck the Gulf Coast on August 29, 2005, the destruction left in her wake was impossible to measure. Wind and water leveled communities, destroyed homes, stole cherished belongings, and washed away the carefree lives of residents caught in her path. Each citizen, business, and unit of government was impacted by the scope and breadth of the disaster. As the waters receded, survivors faced the next challenge, rebuilding more than 300 years of history lost to the storm. Property owners looked to the federal government and the insurance industry to provide the means to put their lives back together, depending largely on federal disaster relief assistance and the proceeds from separate flood and wind insurance. As rebuilding and recovery efforts began, thousands of insurance claims were filed. Claims adjusters were forced to evaluate the loss suffered and make determinations as to the cause of the damage and destruction of properties—wind versus flood—determining whether the private insurance industry or federal government would have the obligation to pay. In the midst of the recovery process, allegations were made that corrupt evaluation policies adopted by several insurance companies led to the denial of many wind insurance claims. These allegations and the general retreat of the private insurance industry from offering wind coverage in coastal areas after the hurricane necessitated a reevaluation of wind and flood insurance policies.

In anticipation of another active hurricane season, the Multiple Peril Insurance Act was introduced to the House of Representatives by Mississippi Congressman Gene Taylor in March 2009.<sup>1</sup> This Act proposes to expand the National Flood Insurance Act of 1968<sup>2</sup> to include windstorm insurance coverage in addition to flood insurance coverage. The revisions would increase the availability of wind coverage and eliminate the need for insurance claims adjusters to determine whether water, wind, or some combination of the two damaged or destroyed a property; regardless of what caused the property damage, the total damage would be covered under the Act.<sup>3</sup>

#### THE NATIONAL FLOOD INSURANCE ACT

Flooding “is generally excluded from homeowner policies that typically cover damage from other losses, such as wind, fire and theft. Because of the catastrophic nature of flooding and the inability to adequately predict flood risks, private insurance companies have largely been unwilling to underwrite and bear

the risk of flood insurance.”<sup>4</sup> “Insurers typically do not wish to provide coverage for an event that can cause significant loss to numerous properties at the same time and in the same area. Instead, they tend to insure random, yet predictable, events.”<sup>5</sup> After widespread flooding occurred along the Mississippi River in the 1960s, insurance companies responded by raising premiums and refusing to insure at-risk properties. In 1968, Congress responded by passing the National Flood Insurance Act,<sup>6</sup> which offers federally backed flood insurance to homeowners, renters, and businesses in flood-prone and coastal areas that have adopted adequate flood plain management regulations. Under the National Flood Insurance Act, the National Flood Insurance Program (NFIP)<sup>7</sup> “was designed to stem the rising cost of tax-payer funded relief for flood victims and the increasing amount of damage caused by floods.”<sup>8</sup>

Congress determined that “factors... made it uneconomic for the private insurance industry alone to make flood insurance available... on reasonable terms and conditions; but a program of flood insurance with large-scale participation of the Federal Government and carried out to the maximum extent practicable by the private insurance industry [would be] feasible and [could] be initiated.”<sup>9</sup> The program was instituted through the “Write Your Own” Program, which allows the government to contract with private insurance companies to sell, write, and service<sup>10</sup> flood policies in their own names. The private insurance companies “receive an expense allowance for policies written and claims processed while the Federal Government [guarantees the policy] retain[ing] responsibility for underwriting losses” and sets rate and coverage limitations.<sup>11</sup>

According to FEMA, [the administrator of the NFIP] every \$3 in flood insurance claims payments saves \$1 in disaster assistance payments, and the combination of flood plain management and mitigation efforts save about \$1 billion in flood damage each year.<sup>12</sup>

#### WIND VERSUS FLOOD

Unlike flood insurance, insurance covering wind damage is generally provided through standard homeowner insurance policies offered by private insurance companies or state-sponsored insurers, often referred to as state wind pools, or, insurers of last resort. In areas particularly prone to strong wind-based storms, however, the purchase of additional wind coverage may be required for adequate coverage.<sup>13</sup> In fact, in regions prone to hurricanes and flooding, it may be necessary for property owners to purchase up to three separate insurance policies to insure adequate coverage from risk.<sup>14</sup> One insurance company will often provide all of the policies, including a flood insurance policy on behalf of the federal government as permitted under NFIP. That insurance company when evaluating damage caused by both flooding and wind has an inherent conflict of interest when determining whether

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damage should be blamed on flooding covered by the federal government or hurricane winds covered by the insurance company itself.<sup>15</sup>

Following Hurricane Katrina, most insurance companies servicing the southeast faced this conflict. Inland, where wind was the only source of damage, and flooding was not a contributing factor, hundreds of thousands of claims for wind damage were paid; however, “on the Gulf Coast where winds were strongest” but flooding also contributed to damage, it has been reported that “thousands of homeowners were left with uncovered losses because these companies denied their claims for wind damage.”<sup>16</sup> Although NFIP stipulates that any insurance “company issuing a flood policy has a fiduciary responsibility to represent federal taxpayers and to provide a proper adjustment of combined wind and water losses,” allegations have been made that many insurance companies defrauded insurance “policyholders and taxpayers by manipul[at]ing insurance adjustments to blame flooding for many losses that should have been covered by the insurers’ own windstorm policies.”<sup>17</sup> Evidence that several insurance companies adopted policies that attributed all damage to flooding if there was any damage caused by flooding present,<sup>18</sup> and declared all damage to be the result of storm surge when it was impossible to determine from the physical evidence remaining how much damage or destruction had been caused by wind or water contributed to the claims made against insurance companies.<sup>19</sup> Practices like the ones described would deny “thousands of policyholders the coverage for which they had paid high premiums, allow insurers to shift liability for some wind damage to the National Flood Insurance Program, and saddle federal taxpayers with billions of dollars of repair and rebuilding costs that should have been paid by insurance.”<sup>20</sup>

Desperate for the funding necessary to rebuild their lives, policyholders appealed claim denials and voiced concerns regarding the potential abuses of the insurance industry. The legal question that emerged from the appeals was who has the burden of proof to show how much damage was caused by wind and how much was caused by flooding. When the Louisiana district court confirmed insurance companies had the burden of proof,<sup>21</sup> insurance companies, with additional public pressure, were forced to take a second look at claims they had initially denied. Still insurance companies responded that they would only pay “for wind damage that [could be] substantiated.”<sup>22</sup> The NFIP, also unable to distinguish between cause, rather than denying coverage, instead paid insurance proceeds for damage claimed, whether resulting from wind or flood.

Dependent on information provided by the private insurance companies employed under NFIP’s “Write Your Own” program, “the claims information NFIP collects may not always allow FEMA to effectively oversee determinations and apportionments after hurricane events in order to ensure the accuracy of NFIP claims.”<sup>23</sup> Generally, the data provided to the NFIP is limited to information about flooding; claims data does not include information about all perils that caused damage to the property. Even when insurance companies in the “Write Your Own” program adjust claims for wind under their own policy, as well as claims for flood under the NFIP, the information provided to NFIP is restricted to flood related

records only. Without information regarding all perils that affect a property, NFIP does not have the ability to evaluate whether claims made under NFIP were limited to flood damage or to address the potential conflict of interest that may arise when “Write Your Own” insurers adjust claims for both wind and flood.<sup>24</sup>

Claims under the NFIP resulted in a \$17 billion deficit following Hurricane Katrina. “NFIP is intended to pay operating expenses and insurance claims with flood insurance policy premiums rather than tax dollars, but it has statutory authority to borrow funds from the U.S. Treasury to keep solvent in heavy loss years.”<sup>25</sup> In years past, the NFIP’s annual premium income of \$2 billion and an occasional temporary loan from the Treasury have allowed the program to function self-sufficiently.<sup>26</sup> By March 2006, however, the NFIP was forced to increase its borrowing authority with the Treasury from \$1.5 billion to \$20.8 billion.<sup>27</sup> If, as evidence suggests, private insurance companies allocated loss that should have been covered under privately-insured wind policies to the NFIP, arguably a portion of the deficit consists of a federal bailout of sorts to the private insurance industry, similar to the banking industry’s current bailout under the Troubled Assets Relief Program (TARP). This bailout caused taxpayers to shoulder some of the costs that resulted from the risk the industry took when it decided to provide wind coverage in high-risk areas and to subsidize the premiums the industry already received from policyholders.

Problems with wind insurance coverage did not stop with the denials of wind damage claims or their misappropriation to the NFIP during the recovery process. As homes and businesses were rebuilt, property owners attempting to insure their property against future loss found that insurance companies, adverse to the potential repeated risk, had “increased premiums on existing policies, canceled existing policies or have stopped writing new policies altogether.”<sup>28</sup> Often a property owner’s only option for wind coverage is a state wind pool, the insurer of last resort.<sup>29</sup>

#### PROPOSED MULTIPLE PERIL INSURANCE ACT

The proposed Multiple Peril Insurance Act presents an alternative for property owners allowing them to purchase comprehensive insurance, including both windstorm<sup>30</sup> and flood coverage in one policy. With a combined policy, policyholders and insurers would avoid the wind-versus-flood dispute, policies would be more widely available, and risk would be spread geographically rather than centralized in state wind pools or in a few private insurance companies.<sup>31</sup>

The proposed Act would make the following revisions to the National Flood Insurance Act:

##### 1. Provide an Option to Purchase Multiple Peril Coverage or Separate Windstorm Coverage

Depending on availability by area, the Act would provide the option to purchase “multiperil coverage” from the federal government which would provide “optional insurance against loss resulting from physical damage to or loss of real property or personal property related thereto located in the United States arising from any flood or windstorm”<sup>32</sup> or, if a policyholder has





tax premiums.<sup>47</sup> In addition, the industry claims that enactment of the Act would expand the reach of the government and could hurt the national economy, the affordability of insurance, and be “unnecessarily costly to taxpayers,” who would be forced to shoulder the cost of coverage for people who live in high-risk places.<sup>48</sup>

Although wind coverage is currently available through remaining private insurance companies and state wind pools, the multi-peril coverage option does more than just provide a property owner with wind insurance coverage. It eliminates the wind-versus-flood dispute that created tremendous hardship for property owners and NFIP alike following Hurricane Katrina. Under a multi-peril policy, evidence must be shown that damage resulted from wind or flood but it is not necessary to distinguish which was the specific cause of loss allowing claims to be resolved more quickly. With all coverage being provided by the federal government, concerns regarding shifting of liability and manipulation of adjustments would no longer exist. It is possible, however, depending on the state, that the Act, although covering wind and flood, could cover fewer perils than a NFIP policy combined with a state wind pool policy. If, in order to ensure that there is not a gap in coverage, a property owner had to purchase an additional policy in the private insurance market to maintain an adequate amount of coverage the advantage of the Act would be counteracted and similar problems relating to determination of cause and apportionment would result.

Rather than excluding the private insurance industry from the market, the option of purchasing combined wind and flood insurance coverage is intended to “stabilize the insurance markets in coastal areas where insurance companies have stopped writing new policies.”<sup>49</sup> Insurance companies could return to coastal markets to sell homeowners’ insurance without taking on the hurricane risk that they would like to avoid and could sell, write, and service the multiperil policies on behalf of the government, like under the current National Flood Insurance Act, and receive a commission for selling policies and reimbursement for reasonable administrative expenses.<sup>50</sup> Relieving the burden of providing wind coverage, the private insurance industry would have an incentive to continue writing policies in coastal areas.<sup>51</sup>

The Act would resolve issues relating to availability of wind policies and reduce the risk to private insurance companies, but could potentially expose the federal government and taxpayers to more significant loss. As with state wind pools, it is likely that the Act will primarily insure high-risk property. Although risk would be spread across the country, the level of risk will likely not vary. Such uniformity in risk could result in a higher proportion of the number of claims in comparison to the number of policyholders for NFIP than for private insurers who could spread the risk not only geographically, but also across varying levels of risk. Under the Act, this risk of loss would be entirely born by the federal government and subsequently passed on to taxpayers. The private insurance industry, however, is able to hedge risk of loss by obtaining reinsurance which provides insurance coverage against catastrophic loss for insurance companies.<sup>52</sup>

Setting premium rates to cover all expected loss for wind and flood would require “sophisticated determinations.”<sup>53</sup>

Implementation of the Act would require the adaptation of “existing administrative, operation, monitoring, and oversight processes and establish[ment of] new [processes] to accommodate wind coverage,” determination of appropriate building codes “address[ing] constitutional issues related to federal regulation of state and local code enforcement,” expansion of the “Write Your Own” program, and the agreement and adoption by communities of international building codes and mitigation measures.<sup>54</sup> However, much of the NFIP debt from Hurricane Katrina was due to the failure of levees and floodwalls in New Orleans, Louisiana, where the flood maps and premiums assumed that the levees would hold. Their failures increased NFIP’s liabilities by billions of dollars. Furthermore, Hurricane Katrina produced an unprecedented storm surge, which made the flood damage much more severe than expected. Comparatively, setting premiums based on the probability and severity of hurricane winds is much easier than predicting storm surge or levee performance.

Economist Lloyd Dixon of the RAND Corporation paints a federal insurance pool covering hurricanes and other major disasters as a benefit to taxpayers: “[T]he government is not subject to the private-sector factors that produce large swings in premiums around expected loss in private insurance markets. Thus, compared with the private sector, government should be able to set insurance prices closer to expected loss for hurricanes and other catastrophic risks, and keep those prices closer to expected loss over time.”<sup>55</sup> The premiums for multi-peril policies would be set “according to risk by using the same data available to insurance companies and state wind pools. Once the risk is estimated for a location, the premiums for specific properties would be set by adjusting for construction methods, foundation, wall and roof types and other building characteristics.”<sup>56</sup> To the extent those objectives could be accomplished, reasonable, accurate premiums and comprehensive insurance coverage could be expected to relieve property owners and taxpayers of the burden of relying on and providing federal disaster relief assistance.<sup>57</sup> For instance, after Hurricane Katrina, even in cases in which disputes over wind and flood eventually were resolved, taxpayers paid for FEMA trailers, housing vouchers, grants, subsidized loans, tax deductions, and other disaster relief during the time required to resolve such disputes. Lengthy insurance disputes delay the recovery of entire communities and prolong the reliance of local governments and businesses on disaster payments, loans, and tax relief. The Homeowners Assistance Program in Mississippi, the Road Home program in Louisiana, and other federal assistance programs paid billions of dollars in grants to assist tens of thousands of homeowners who had wind coverage, but did not have flood coverage for the portion of their loss that was attributed to flooding. The Multiple Peril Insurance program should increase the number of policies and the amount of flood coverage in coastal areas so that more future hurricane losses will be covered by insurance premiums. Coastal residents who are not required to purchase flood insurance, but do have some flood risk from an extreme event, should be more likely to buy one policy that will cover hurricane damage than to buy separate policies for wind and flood risks.

Although a federal program might be at an advantage once the Act is in place and risk of loss for specific areas can

be estimated over time, in the early years of implementation determination of the future cost of loss would be difficult. Funding of the Multiple Peril Insurance program would depend on the amount of participation in the program and the risk level of those participants as estimated by existing data, and could result in higher premiums than those that could be offered by private insurance companies or state wind pools. Unlike private insurance companies who “can generally supplement premium income with investment income on funds that they hold” and rely on competition to promote a more efficient and profitable market, the Act will rely solely on premiums to fund the program.<sup>58</sup>

By creating “workable methods of pooling risks, minimizing costs and distributing burden equitably among policyholders and taxpayers,”<sup>59</sup> the Act proposes one viable option for increasing availability of wind policies and remedying the wind-versus-flood dispute prior to any future disasters.

## Endnotes

1 The Multiple Peril Insurance Act of 2009, H.R. 1264, 111th Cong. (2009). The bill was introduced March 3, 2009 by Congressman Gene Taylor along with 14 bipartisan co-sponsors and referred to the House Financial Services Committee. Congressman Gene Taylor is a resident of Bay Saint Louis, Mississippi.

2 42 U.S.C. § 4001 et seq. (1997).

3 Gene Taylor, “Water/Wind Dispute: The Eye of the Insurance Storm,” [http://www.taylor.house.gov/index.php?option=com\\_content&task=view&id=306&Itemid=36](http://www.taylor.house.gov/index.php?option=com_content&task=view&id=306&Itemid=36) (last visited Apr. 15, 2009).

4 National Flood Insurance Program: Hearing Before the S. Banking, Housing and Urban Affairs Comm., 109th Cong. (2006) (statement of David M. Walker, Comptroller General of the United States Government Accountability Office Testimony) [hereinafter Walker Testimony]. See Insurance Exposed by 2005 Hurricanes: Hearing Before the Subcomm. on Oversight and Investigations of the H. Financial Services Comm. and Subcomm. on Management, Investigations and Oversight of the H. Homeland Security Comm., 110th Cong. (2007) (statement of Orice M. Williams, Director of Financial Markets and Community Investment U.S. Government Accountability Office) [hereinafter Williams Testimony].

5 Flood Insurance: Hearing Before the Subcomm. on Housing and Community Opportunity of the H. Financial Services Comm., 110th Congress (2007) (statement of W. Anderson Baker, III, President of Gillis, Ellis & Baker Inc.) [hereinafter Anderson Testimony].

6 42 U.S.C. § 4001 (1997). See generally 42 U.S.C. § 4001(a) (“Congressional findings and declaration of purpose. (a) Necessity and reasons for flood insurance program. The Congress finds that (1) from time to time flood disasters have created personal hardships and economic distress which have required unforeseen disaster relief measures and have placed an increasing burden on the Nation’s resources; (2) despite the installation of preventive and protective works and the adoption of other public programs designed to reduce losses caused by flood damage, these methods have not been sufficient to protect adequately against growing exposure to future flood losses; (3) as a matter of national policy, a reasonable method of sharing the risk of flood losses is through a program of flood insurance which can complement and encourage preventive and protective measures; and (4) if such a program is initiated and carried out gradually, it can be expanded as knowledge is gained and experience is appraised, thus eventually making flood insurance coverage available on reasonable terms and conditions to person who have need for such protection.”)

7 42 U.S.C. § 4011.

8 Flood Insurance, <http://www.iii.org/media/hottopics/insurance/flood/> (last visited Apr. 15, 2009).

9 42 U.S.C. § 4001(b).

10 Services include private insurance companies agreeing to adjust flood claims on behalf of NFIP. See Insurance Claims Payment Processes on the Gulf Coast: Hearing Before the Subcomm. on Oversight and Investigations of the H. Financial Services Comm., 110th Cong. (2007) (statement of U.S. Representative Gene Taylor, Fourth District, Mississippi) [hereinafter Taylor Testimony].

11 What is the Write Your Own (WYO) Program, <http://www.fema.gov/business/nfip/wyowhat.shtm>. See Walker Testimony, *supra* note 4. See also U. S. Gov’t Accountability Office, No. GAO-07-169, National Flood Insurance Program: New Processes Aided Hurricane Katrina Claims Handling, but FEMA’s Oversight Should Be Improved 2 (2006) [hereinafter NFIP New Processes] (“FEMA pays 88 private insurance companies to perform the administrative functions of selling and servicing flood insurance policies and settling claims”).

12 Walker Testimony, *supra* note 4.

13 See *id.*

14 See *id.*

15 Gene Taylor, “The Insurance Industry’s Inherent Conflict of Interest,” [http://www.taylor.house.gov/index.php?option=com\\_content&task=view&id=297&Itemid=36](http://www.taylor.house.gov/index.php?option=com_content&task=view&id=297&Itemid=36) (last visited Apr. 15, 2009).

16 See Gene Taylor, *Federal Insurance Reform After Katrina*, 77 Miss. L.J. 783, 784 (2008).

17 *Id.* at 786 (citing 44 C.F.R. § 62.23(f) (2005)). See Gene Taylor, Multiple Peril Insurance Act of 2009: The Facts, [http://www.taylor.house.gov/index.php?option=com\\_content&task=view&id=296&Itemid=36](http://www.taylor.house.gov/index.php?option=com_content&task=view&id=296&Itemid=36) (last visited Apr. 15, 2009); State Farm: We’re Paying Wind Damage Claims (Apr. 7, 2006), [www.insurancejournal.com/news/southeast/2006/04/07/67138.htm](http://www.insurancejournal.com/news/southeast/2006/04/07/67138.htm).

18 See Taylor Testimony, *supra* note 10, at 4 (“State Farm, Allstate, Nationwide, USAAA and other insurers adopted procedures that, *a priori*, attributed all damage in the surge area to flooding and then forced homeowners to prove otherwise.”)

19 See Taylor, *supra* note 16, at 783 (indicating damage to a second story of a home was caused by water although there were severe wind for 4 hours prior to water arriving).

20 Taylor, *supra* note 16, at 786 (citing 44 C.F.R. 62.23(f) (2005)). See Gene Taylor, Multiple Peril Insurance Act of 2009: The Facts, [http://www.taylor.house.gov/index.php?option=com\\_content&task=view&id=296&Itemid=36](http://www.taylor.house.gov/index.php?option=com_content&task=view&id=296&Itemid=36) (last visited Apr. 15, 2009). See, e.g., State Farm: We’re Paying Wind Damage Claims (April 7, 2006), [www.insurancejournal.com/news/southeast/2006/04/07/67138.htm](http://www.insurancejournal.com/news/southeast/2006/04/07/67138.htm).

21 Taylor, *supra* note 16, at 784. See, e.g., Broussard v. State Farm Fire and Cas. Co., 2007 WL 2264535 (E.D. La. Aug. 2, 2007); Ferguson v. State Farm Ins. Co., 2007 WL 1378507 (E.D. La. May 9, 2007).

22 State Farm: We’re Paying Wind Damage Claims, *supra* note 17.

23 U.S. Gov’t Accountability Office, No. GAO-08-28, National Flood Insurance Program: Greater Transparency and Oversight of Wind and Flood Damage Determinations Are Needed 4 (2007).

24 See Williams Testimony, *supra* note 4. See also U. S. Gov’t Accountability Office, No. GAO-07-991T, National Flood Insurance Program: Preliminary Views on FEMA’s Ability to Ensure Accurate Payments on Hurricane-Damaged Properties 2, 5 (2007); NFIP New Processes, *supra* note 11, at 7 (During Hurricanes Katrina and Rita, FEMA also adopted expedited methods for claims processing that reduced the claim information received by FEMA further, allowing “claims payments to policy limits without site visits by certified flood claims adjusters or... the use of models that paid claims based on the square footage of the home and general classification by adjusters of the quality of its building materials.”)

25 NFIP New Processes, *supra* note 11, at 2.

26 See *id.*

27 *Id.* “FEMA projects that when all claims are settled, claims from NFIP policyholders who suffered flood damage from Hurricanes Katrina and Rita will total more than \$20 billion. In contrast, the NFIP reports that from its

inception in 1968 until August 2005, it paid a cumulative total of about \$14.6 billion in claims.” *Id.* at 14.

28 Taylor Introduces Multiple Peril Insurance Act, <http://www.wlox.com/Global/story.asp?s=9934553> (last visited Apr. 15, 2009). See Taylor, *supra* note 16, at 788.

29 See Taylor, *supra* note 16, at 788.

30 Windstorm refers “any hurricane, tornado, cyclones, typhoon or other wind event.” H.R. 1264 § 6(3).

31 “I have proposed the idea that you can buy your flood insurance from the federal government—that stays as is. And you can buy an option of your flood insurance to cover wind. So that whether the wind did it or the water did it, if you come home to a slab, or if you come home and your home is substantially damage or destroyed, it doesn’t matter. If you built it the way you are supposed to, if you paid your premiums and the storm gets it, you’re going to get paid. You don’t have to hire a lawyer. You don’t have to hire an engineer. You don’t have to wait years to get the check that you should have gotten within days.” Gene Taylor, “Anti-Concurrent Causation: Insurer’s Hidden Weapon Against Homeowners,” [http://www.taylor.house.gov/index.php?option=com\\_content&task=view&id=294&Itemid=36](http://www.taylor.house.gov/index.php?option=com_content&task=view&id=294&Itemid=36) (last visited Apr. 15, 2009). See also “Protecting America’s Home & Business Owner. Protecting America’s Taxpayer,” <http://slabbed.wordpress.com/2009/03/04/hr-1264-one-policy-premium-one-claims-adjuster>.

32 H.R. 1264§ (c)(1)(A).

33 *Id.* at § (c)(1)(B).

34 *Id.* at § (c)(2).

35 *Id.* at § (c)(3)(A).

36 *Id.*

37 *Id.*

38 *Id.* at § (c)(4)(A)(ii).

39 *Id.* at § (c)(5).

40 *Id.* § (c) (7)(A).

41 *Id.* § (c)(7)(B).

42 Anderson Testimony, *supra* note 5.

43 Congressman Taylor indicated that “there’s nothing in existing regulations stopping insurers from creating multi-peril policies right now by selling flood coverage. The fact is that the private sector doesn’t want that job.” Anderson Testimony, *supra* note 5.

44 HR 1264 - One policy. One premium. One claims adjuster. Protecting America’s home & business owner. Protecting America’s taxpayers., <http://slabbed.wordpress.com/2009/03/04/hr-1264-one-policy-one-premium-one-claims-adjuster-protecting-americas-home-business-owner-protecting-americas-taxpayers/> (last visited Apr. 15, 2009).

45 Deborah Barfield, Taylor pushes insurance for wind damage, <http://www.hattiesburgamerican.com/apps/pbcs.dll/article?AID=2009903230312> (last visited Apr. 15, 2009). “By spreading risk geographically, a federal program would result in lower risk than [a state pool].... Insurance works best when the insured pool can spread the risk. A federal pool spread over all coastal states would not have a high percentage of its properties hit at one time. On the other hand, a single state pool with concentrated risk could have losses to most of its properties after a major hurricane.” Taylor, *supra* note 16, at 791.

46 Arthur D. Postal, “Multi-Peril Bill Reintroduced; Industry Opposed,” (March 4, 2009), [http://www.taylor.house.gov/index.php?option=com\\_content&task=view&id=427&Itemid=36](http://www.taylor.house.gov/index.php?option=com_content&task=view&id=427&Itemid=36). See Barfield, *supra* note 42.

47 Property Casualty Insurers Association of America, Calls for Federal Windstorm Coverage are Misguided (July 21, 2008), [http://www.pciaa.net/publish/web/webpress.nsf/lookupwebcontent/8195913062b7749b8625748d0051e80/\\$FILE/WindCoverage072108\(2\).pdf](http://www.pciaa.net/publish/web/webpress.nsf/lookupwebcontent/8195913062b7749b8625748d0051e80/$FILE/WindCoverage072108(2).pdf). PCI believes that the following negative consequences could result from putting in place the Multi-Peril Insurance Act: “(a) 65,000 jobs could be displaced if the bulk of the property insurance marketplace purchased the multi-peril coverage, (b) loss of more than \$38 billion in private industry insurance premiums, (c) \$1 billion in lost state premium tax revenue and

more than \$1 billion in individual state and federal income tax revenues, (d) irreparable damage to the private coastal insurance market would result from such a program being enacted and (e) availability of reinsurance may also be adversely affected, because if wind exposure shifts from the private marketplace to the NFIP, reinsurers may be less willing to invest capital in the US market.” *Id.*

48 Postal, *supra* note 46; David A. Sampson, *Don’t Add Wind Coverage to U.S. Flood Insurance Program*, THEHILL.COM (Sept. 16, 2008), <http://thehill.com/letters/dont-add-wind-coverage-to-u.s.-flood-insurance-program-2008-09-16.html>.

49 Taylor, *supra* note 16, at 790-91.

50 *Id.*

51 *Id.*

52 U.S. Gov’t Accountability Office, No. GAO-08, 504, Natural Catastrophe Insurance: Analysis of a Proposed Combined Federal Flood and Wind Insurance Program 4, 24 (2008) [hereinafter Analysis of Proposed Combined Insurance].

53 *Id.* at 3.

54 *Id.* at 9-10.

55 Taylor, *supra* note 16, at 791 (citing Lloyd Dixon, James W. Macdonald & Julie Zissimopolous, Commercial Wind Insurance in the Gulf States: Developments Since Hurricane Katrina and Challenges Moving Forward 3 (2007)).

56 *Id.* at 791-92.

57 *Id.* at 790. After Hurricane Katrina, storm survivors relied on federal disaster assistance in the form of FEMA trailers, subsidized loans, homeowner repair grants, and special tax deductions rather than being able to depend on the insurance coverage they had paid for. *Id.*

58 Analysis of Proposed Combined Insurance, *supra* note 49, at 29.

59 *Id.* at 8.

